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v.2906

No. 14201

United States
Court of Appeals

For the Ninth Circuit.

See Rob. - 2905 - 2907
CHET L. PARKER and LOIS M. PARKER,
Appellants,
vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEUS WINANS,
Appellees,

and

WALTER STEGMANN,
Appellant,
vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
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Transcript of Record

In Five Volumes

Volume III
(Pages 1023 to 1556)

Appeals from the United States District Court for the
District of Oregon

FILED

MAY - 7 1954

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(Testimony of Retlaw Haynes.)

Q. What was the name of the man you brought on that second trip? A. Kuns.

Q. Who went up to the property, actually up to the property, with you on the second trip?

A. Well, Paul Winans, I am quite sure his brother, Ross, was there, and Walter Stegmann.

Q. Was the other man whose name you couldn't recall on the 18th, was he present also on the 25th?

A. I don't remember that he was. I don't believe so.

Q. Then on the 25th, did your work continue for just one day, or did you go over, run into Sunday also? A. We worked Sunday also.

Q. On either of those two days, did you yourself have any direct conversation with Mr. Stegmann as to his interest, if any, in the property?

A. Well, I think you are stating that a little wrong. I didn't have direct conversation, but I couldn't help overhearing conversation between Mr. Stegmann and Mr. Winans pertaining to that.

Q. All right, did you overhear—or what conversation between Mr. Stegmann and Mr. Winans did you overhear on Saturday or Sunday, the 25th or 26th?

Mr. Jaureguy: Parkers object to it as far as they are concerned on the ground it is not binding upon them. [965]

The Court: Go ahead.

The Witness: Well, would you break that down a little bit, or just anything I heard is what you want?

(Testimony of Retlaw Haynes.)

The Court: Go ahead, tell us anything you heard.

A. Well, at dividing up those lake front lots was the thing I remember most clearly because Mr. Stegmann and Mr. Winans were having difficulty in agreement on how they were going to divide these lots up. Neither one had a good idea because just to start dividing lots up without having a plat worked up is pretty hard to tell, what shape, what area, they were in, and they were doing a lot of talking and arguing. I was getting kind of disgusted standing around waiting. I told them if they couldn't make up their minds maybe I had better take off because maybe they was wasting my time and maybe I was wasting theirs because they couldn't reach an agreement on how to divide these lots adjacent to the lake, on what method and so forth, what shape and so forth to make them.

Q. Was that on Sunday that that was?

A. That was Sunday towards the afternoon.

Q. After you told them or asked them whether or not you should take off, did you hear Mr. Stegmann or Mr. Winans say anything further about what they were going to do with reference to the survey?

A. Well, I believe they wanted me to come back the following week end, and I told them I couldn't, and Mr. Stegmann said he [966] knew someone he could get to complete the survey.

Q. Did he mention the man who he said he could get to complete the survey, by name?

A. Not that I remember.

(Testimony of Retlaw Haynes.)

Q. Did he say where he would be coming from?

A. Not that I recall.

Q. Did you overhear any other conversation between Mr. Stegmann and Mr. Winans in regard to completing the survey or when or how it was going to be done?

A. Well, I just can't remember the details on how I left there but it was that Mr. Stegmann would have this friend or someone he knew to complete the survey, and I would not return unless I was contacted.

Q. When was the next time that you had anything to do with the property or the survey following the 25th and 26th?

A. Well, Mr. Winans called me one Friday, I believe, the date—it was the first part of September, and he wanted me to come up and meet him and Mr. Stegmann at the City Engineer's office in Hood River.

Q. You met with them on the Saturday?

A. Saturday morning.

Q. Would that be about Saturday, September 8th?

A. Well, it could have been. It was the very first week or thereabouts in September.

Q. Now, on Saturday—or on that Saturday that you saw Mr. [967] Winans and Mr. Stegmann, did you hear any discussion between Mr. Stegmann and Mr. Winans relative to the title to the 40-acre tract which was adjacent, or to the Lot 1 that you had been doing the survey on?

(Testimony of Retlaw Haynes.)

A. Well, I can't recall that in the City Engineer's office there was any mention of that, but at one of the trips in the field, I can't remember which one it was, there was some mention of this property that the Government had claim to. It was supposed to have been school property. There was some mention of it, but what the train of thought was I can't recall.

Q. That was on one of the actual trips when you were on the property; is that right?

A. One of the trips when we were on the property there was some discussion of it, but my job was with a transit. I didn't retain exactly what was said, but I do remember it being talked about.

Q. Well, then, on this Saturday that you had met in the City Engineer's office, later in the afternoon you also met over in an attorney's office in Hood River; did you not? A. Yes.

Q. Do you recall the name of that attorney?

A. Vawter Parker.

Q. Did you hear any discussion between Mr. Stegmann and Mr. Winans relative to this title concerning the 40-acre tract while you were over there at Vawter Parker's office? [968]

A. Yes.

Q. State as best you can, in your own words, just what the discussion or conversation was that you heard?

A. Well, it was discussed about, that this forty, I believe, that the Government had a claim on and

(Testimony of Retlaw Haynes.)

that Winans and his father had had that property in the family for many years, and they had been paying taxes, and there had never been any trouble over it although it originally was supposed to have been school property, and Paul said it would take an Act of Congress to clear it up, and he said he actually had instigated just such a procedure. He said——

Q. Was there anything said that afternoon in Vawter Parker's office that you recall about Mr. Stegmann signing any agreement pertaining to the defect or Government claim against the property?

A. Yes, I didn't read it because I was sitting across the room, but I recall that Mr. Stegmann refused to sign the paper as it was presented.

Q. You say you did not read the document that was submitted to Mr. Stegmann, but was there anything said that, so that you knew what the document was about; in other words, what it concerned?

A. Well, he said something about admitting that the situation or something to that effect if he signed that, but it didn't register on me too much just as to the details of it.

The Court: Would you read that back? [969]

(Last answer read.)

The Court: Are you talking about what Mr. Stegmann said?

The Witness: Yes.

The Court: Mr. Stegmann refused to sign it because of what reason? You tell us again.

(Testimony of Retlaw Haynes.)

The Witness: What the reason was I didn't know because I didn't see the paper, but Mr. Stegmann said that if he signed that he would—it would be an admission of some knowledge that—I don't know just what it was at the time.

Q. (By Mr. Buell): Was anything said there on that Saturday at Vawter Parker's office or while you were over at the City Engineer's office earlier in the day as to who was the purchaser of the property?

A. Not directly, but I was under the impression——

Mr. Jaureguy: I want to object to that as a conclusion of the witness.

Mr. Buell: I think the witness' state of mind——

Mr. Jaureguy: I have already objected and I don't think I need to object again.

The Court: I do not think a witness' state of mind has anything to do with this case unless he was lead to believe that Stegmann was a purchaser by some affirmative representations that were made either by Stegmann or someone else in Stegmann's presence.

Mr. Jaureguy: If I may say so, I think that even then his [970] state of mind is not right, but it is as to what was said.

The Court: That is right.

Mr. Buell: I will get at it another way then.

Q. Mr. Haynes, have you ever known a man by the name of Chet L. Parker? A. No.

Q. Did you hear his name mentioned at any time

(Testimony of Retlaw Haynes.)

on the occasion of your first trip to the Lost Lake property, August 18th, or your next trip on August 25th or 26th, or on the occasion of your meetings there on Saturday at the City Engineer's office or attorney Parker's office?

A. I don't remember having heard that name until this case came up.

Q. Who was it that you first heard the name from? Who was the person that first called your attention to the name Chet L. Parker, and wanted to know whether or not you knew him or knew anything of him in connection with this Winans' transaction?

A. Mr. Winans' attorney, Mr. Lindsay.

Mr. Buell: I have no further questions. Thank you, Mr. Haynes.

Cross-Examination

By Mr. Jaureguy:

Q. Now, when you went up to Lost Lake from Hood River, did you go by the Winans place?

A. Yes. [971]

Q. In going from Hood River to Lost Lake, the only road you can go by is a road that goes by the Winans place?

A. I think it is.

Q. When you came back from that first trip on the 18th, did you stop at Winans' place?

A. Yes.

Q. How long were you there?

A. Well, I must have been there, well, a good half hour or a little over.

(Testimony of Retlaw Haynes.)

Q. You referred to somebody that you understood to be Walt Stegmann's brother. Was he still at the place when you left?

A. When I left to come to Portland?

Q. I beg your pardon?

A. You mean when I left Winans' place to come to Portland?

Q. Yes. A. No.

Q. Was Walt Stegmann there himself?

A. No, I am sure they left together.

Q. Well, as a matter of fact, wasn't Walt Stegmann there talking to Mr. Winans when you and the other engineer, Mr. Bogar, left?

A. No, I believe it was the other way around.

Q. You think they left first? A. Yes.

Q. Now, on the—any of those trips that you made up there, did [972] you keep any notes?

A. Well, Mr. Bogar has the field notes that we just kept of our survey notes, but as far as conversations or anything, no.

Q. The principal piece of work you were doing concerned the survey, to survey off those lots along the lake?

A. Well, that was more or less incidental to getting the boundary of this total of Lot 1 established.

Q. About how much time did you spend getting the lots surveyed off, marked off around the lake?

A. Oh, that was a useless survey what we did, but I imagine we spent two or three hours.

Q. You say that was useless? A. Yes.

(Testimony of Retlaw Haynes.)

Q. Why was it useless?

A. Because of the way they had me go about it, just was of no value when it was a different lot arrangement laid out the following week by a friend of Mr. Stegmann's.

Q. Did you have anything to do with the making of a sketch or a map following that survey?

A. I just made a little sketch I gave to Paul just showing our survey lines around the extremes of the Lot 1.

Q. You didn't give him any map or sketch showing the lots along the lake? A. No.

Q. I would like to show you Exhibit 303. It faces up when you [973] read the words. This is, however, north.

A. Yes, I am familiar with it.

Q. Are you familiar with this map?

A. I am familiar with the shape. I didn't see this map up at Hood River. There was one that was very similar to this, about the same size, and that was on a linen tracing cloth that I looked at in the City Engineer's office.

Q. This is——

A. That is the meander corner.

Q. Meander corner of, which is the north boundary of Lot 1, is it? A. Yes.

Q. The one that you saw in the City Engineer's office, did it have the lots marked off like this?

A. As far as I can remember, they were marked off like that.

(Testimony of Retlaw Haynes.)

Q. Would it be your best belief that it was actually marked off like this?

A. Well, that would be hard for me to say. Generally, yes, it is the same, but these lots could be a little bit different in feet or so. I can't remember for sure. It has been so long ago, but, generally, it is a likeness.

Q. But the one that you saw had lots from the northern boundary of Lot 1? A. Yes.

Q. Along the lake clear to the southern boundary? [974]

A. I don't know if it was clear to the southern boundary. The southern boundary is over here, but the lots came up to the creek.

Q. Those were small lots. Then the 5.31 acres south of the small lots, was that also on the lot that you——

A. There was a piece of land like that, these lots, about to that extent what they show here that was not divided into lots. Now, the details about this corner I can't remember.

Q. Then the 5.31 acres, the exterior boundaries were marked on that map, were they?

A. I can't remember the acreage.

Q. I mean, was there some square marked?

A. There was some lines left over there, yes.

Q. A square marked out there?

A. Well, as I best as I can recollect, it was square, rectangular at one time—where is the corner—southeast, the southwest corner of Lot 1 over here.

(Testimony of Retlaw Haynes.)

Q. I would say that if you add all of these distances——

A. There should be 1,320 feet across here (indicating).

Q. That is what I am getting at, is here if we add all these distances from the north boundary of Lot 1 to the southern boundary of the 5.31 acres, I think we will find that it is about 1,224 feet, which is about 106 feet less than the entire width of Lot 1?

A. Yes, well, there is a discrepancy somewhere on that. [975]

Q. Now, in the margin of this there are, you will notice the square area? A. Yes.

Q. Square foot areas are added up. Was there something on the margin like that, on the one you saw, showing that the total amount was something in excess of 8 acres?

A. I don't remember anything of a margin. There wasn't any margin on the piece I saw. It was just a piece of tracing cloth.

Q. Now, in this time that you said there was some talk about the Government's claim, there was talk about Winans having had the property for many years? A. Yes.

Q. What was said about that?

A. Well, they just mentioned the fact that his father had had the property since sometime in 1800 and Paul inherited it.

The Court: I didn't hear that last, had the property since sometime in the eighteen hundreds?

The Witness: Yes.

(Testimony of Retlaw Haynes.)

The Court: Then what happened?

The Witness: Then Paul inherited it from his father, is the way I understood. I believe that is how he acquired it. I might be wrong on that but that is my impression. That fact was mentioned like he had that property that length of time and had had no trouble.

Mr. Jaureguy: I take it that that statement was made by Paul [976] Winans in support of a contention or a belief on his part that he had good title and that the claim of the Government was not really a good claim; that is correct, isn't it?

A. I am not sure that that was the impression he was trying to convey.

Q. (By Mr. Jaureguy): Well, he said that his father had had it since the 1800's sometime. Then he inherited it and he had had it ever since. Then what else did he say that indicated that he thought he had good title to that 40 acres?

A. He did have good title except for this claim that the Government had on it.

Q. That is all he said?

A. Yes, and he said he wanted to make it clear that there was that claim so he would not be selling someone possibly property that weren't a fact.

Q. What I am asking you is, what else did he say in support of his contention that he had good title to the 40 acres?

A. That they had kept the taxes up on it.

Q. Did he say that he had put a mortgage on the property?

(Testimony of Retlaw Haynes.)

A. If he did, I don't recollect that. It is hard to remember all those conversations.

Q. He might have said that, too.

A. Well, he could have, but I don't have any remembrance of it.

Q. Do you recall him saying that some attorney had examined the abstract and passed it? [977]

A. Not in my presence, I don't believe. I don't recall it.

Q. Did he say that he had ever gotten title insurance on it?

A. I don't remember any conversation on that either.

Q. Then what he said in support of his contention that he really owned it was that his father had gotten it in the 1800's sometime and he had inherited it since then, and he had had it ever since, and he had been paying taxes on it?

A. Well, that is correct.

Q. Well, now, what do you recall about what he said about the nature of the claim of the Government?

A. Well, this 40 acres, I believe that was a piece that was supposed to have been originally set aside as school property, and I don't remember whether he explained how it happened to get into his private hands or not back in 1800, but, nevertheless, it had, and they had possession of it ever since.

Q. Your recollection is that what he was trying to convey was that this was supposed to have been

(Testimony of Retlaw Haynes.)

school property and should not have gotten from school property into private hands; is that it?

A. Something to that effect.

The Court: Did he talk about an Act of Congress when you were out in the field?

The Witness: No, that was in Vawter Parker's office.

Q. (By Mr. Jaureguy): Well, now, what was the difference, was there anything said in Vawter Parker's office different from [978] what you have been testifying to that was said in the field?

A. Nothing to the contrary that I remember. I remember this school lot had been discussed several times, so it wasn't—that registered because he had mentioned it so many times.

Mr. Jaureguy: That is all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan:

Q. You said here that in this discussion that took place in Vawter Parker's office, that you overheard Mr. Stegmann make some remark about admission of some knowledge, but you did not know what the paper was at the time or the substance of the paper at the time. Have you discussed this case and gone over the nature of that paper since then?

A. Well, I have been told what it was since then.

Q. By whom? A. Mr. Winan's attorneys.

Q. And have you discussed the nature of the

(Testimony of Retlaw Haynes.)

Government's claim with Mr. Winans' attorney since then, too?

A. Discussed the nature of it?

Q. Yes, and the problem relating to the Government's claim; was that explained to you?

A. I knew about that, that the Government had the claim. Now, what do you mean, discussed it?

Q. I mean in the discussion when this paper was explained to [979] you, did Mr. Winans' attorney explain the nature of the language on the paper and the meaning of it, to you? A. Yes.

Q. Did you go over it?

A. Well, he told me it was a deed and it was more or less exempting—I don't know how to word that—that he was to accept this property with the knowledge of this Government claim, something to that effect. I don't remember the exact words, what was said.

Q. Did you discuss this with Mr. Winan's attorney on one occasion?

A. I was up there twice, I think.

Q. Now, on the night of August 18th, that is in your memory, that is the first time you went up there, I believe, was the 18th, when you went up on a field trip with Mr. Bogar? A. Yes, sir.

Q. Then you returned. Did Mr. Winans pay you and Mr. Bogar off for your efforts as surveyors that evening? A. Yes.

Q. Then what happened; did you leave?

A. After he paid us, we left.

Q. Was there any delay in paying you?

(Testimony of Retlaw Haynes.)

A. Yes.

Q. What was that delay?

A. Well, we were waiting outside while Mr. Stegmann and this other man with him were in a conference with Mr. Winans in his [980] office.

Q. Now, in Mr. Vawter Parker's office, and up on the lake there, both times there was considerable difficulty in finally working out the survey of the lots, you said? Did you mean lots adjacent to the lake?

A. Yes.

Mr. Ryan: That is all.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. While a quarter of a quarter section is 1,320 feet, the frontage on the lake was a lot more than 1,320 feet, wasn't it?

A. Well, are you measuring the perimeter of the lake? Yes, it would be.

Q. Measuring the frontage, the perimeter of the lake, yes.

A. Yes.

Q. Because the lake cut right into this quarter of a quarter section; did it not?

A. Yes.

Q. So did you do any measuring at all as to how much footage there was of the lake front?

A. No.

Q. You did not do that? What you were doing, as I understand it, was to just locate the corners, that is, the southwest corner to begin with, then

(Testimony of Retlaw Haynes.)

run inland from the lake in order to get the [981] quarter section corner?

A. I started from the meander corner on the north boundary.

Q. Yes, you started from the meander corner. On which corner would that be?

A. It would be the northeast corner of Lot 1.

Q. It would be the northeast corner of Lot 1, and where did you go from there?

A. Then we went west to an existing monument at the northwest corner of Lot 1.

Q. Yes, was that the corner that also was a corner for this 40-acre tract?

A. Well, I understood it to be so.

Q. That is, it was inland from the lake, anyway?

A. Yes.

Q. Then where did you go?

A. Then we proceeded south between Lot 1 and those 40 acres for 1,320 feet.

Q. To another corner?

A. And established that corner.

Q. You established that corner. Then you went from there toward the lake?

A. Then we went east until we hit the lake.

Q. In order to find the boundaries of Lot 1?

A. Right.

Q. Now, what else did you do? [982]

A. Well, then we went back to the point of beginning when we started to lay out these lake-front lots, and at that time they couldn't agree on what shape to make the lots.

(Testimony of Retlaw Haynes.)

Q. Well, do you recall that Mr. Winans was to receive about an acre close to the northeast corner of lot—of this Lot 1?

A. An acre by that northeast corner?

Q. Well, that was the—the corner where you started your survey, wasn't it? A. Yes.

Q. I beg your pardon?

A. I don't remember that.

Q. The meander corner? A. Yes.

Q. The northeast corner of the lot, the meander corner? A. Yes.

Q. Was there anything said about whether Mr. Winans was to receive an acre in that area there?

A. I don't remember of it.

Q. Do you remember whether there was a difference in the type of lake front, that is, whether it was firm ground there in the northeast section, and then you got into swamp when you went down to the south? A. The southern portion.

Q. The southern portion of it?

A. Yes. [983]

Q. It was swampy down there?

A. Yes, towards the mouth of the creek and south it was marshy.

Q. Now, in order to definitely establish the date on which you were up there on the first time, I have here a check payable to Mr. Bogar in the sum of \$90. Will you examine that? It is Exhibit 328.

A. Exhibit 328.

(Witness reads check.)

(Testimony of Retlaw Haynes.)

A. Yes.

Q. Was that the check made to Mr. Bogar received on the night of the 18th for your services up there that day?

A. Yes, sir.

Q. Now I wish you would tell the Court a little more clearly what happened when you got down—strike that for a moment—do you know who Chet L. Parker is here in the courtroom now?

A. He has been pointed out to me since I have been in the court.

Q. Yes, is that the gentleman that was ever introduced to you up there as a brother of Stegmann?

A. I don't remember of having ever seen him.

Q. Well, you said that on the 18th you met someone that was introduced as a brother of Stegmann?

A. Yes.

Q. Was that man the same man as this Mr. Chet L. Parker?

A. It seems to me it was a taller man.

Q. So you would say that Chet Parker was not the man that you [984] met there that day?

A. No, I am quite sure he wasn't.

Q. Would you tell us about when you got down from Lost Lake back to Dee where Mr. Winans' home was, just roughly now.

A. Well, I guess around six o'clock.

Q. You had surveyed up there as long as you were able to see in the trees?

A. Yes, sir.

Q. And then drove down. Now, did Stegmann and this man that was with Stegmann and the rest of you all come down at the same time?

(Testimony of Retlaw Haynes.)

A. Yes.

Q. All right, now, tell us what Mr. Winans and Stegmann were doing after they got down to Mr. Winans' place?

A. Well, I don't know what they were doing because Paul asked us to wait outside while he finished some business.

Q. Then that is what you were doing, you were waiting outside, and they were in a little service station building, weren't they? A. Yes.

Q. They were in, evidently, to transact some business while they were in there?

A. That is what I understood they were doing.

Q. Well, did you see them handling any papers while they were in there?

A. No, I wasn't looking in the window. I was sitting out there [985] waiting.

Q. You were sitting outside waiting for Winans, weren't you? A. Yes.

Q. At any rate, the two of them were conferring in there for about how long?

A. Well, as I remember, about half an hour.

Q. Was it impressed upon your memory for any particular reason that this did occur, Mr. Haynes?

A. Yes.

Q. Well, give us the reason that it impressed on your memory.

A. Well, I was pretty disgusted with having to wait because I was anxious to get home, and Mrs. Winans brought us over some cool drink to drink while we were waiting.

(Testimony of Retlaw Haynes.)

Q. You were still going to drive back to Portland that night? A. Yes.

Q. You had been rather impatient about the delay? A. That's right; that's right.

Q. But you were waiting there to receive your compensation? A. Yes.

Q. Would you tell us what happened, I mean, after they broke up their conference in the building, what happened?

A. Well, as clearly as I can remember, they left, and we went in.

Q. Now, who is "they"?

A. Mr. Stegmann and this other man with [986] him.

Q. But Winans remained there? A. Yes.

Q. Then you and Mr. Bogar went into the building with Winans?

A. Yes, and he wrote out a check.

Q. Then this check was written out for \$90 here? A. Yes, sir.

Q. Made payable to Mr. Bogar? A. Yes.

Q. What did you do then?

A. Well, we took off.

Q. Well, you came out of the building. Where was your car?

A. Well, it was—I don't remember which side of the building it was on or right in front, but it was right close up.

Q. Right close up. As you came out, did you see anything, any more of Stegmann and this other man?

(Testimony of Retlaw Haynes.)

A. I don't remember of having seen them.

Q. Then you left Dee? A. Yes.

Q. And drove toward Hood River?

A. Yes, sir.

Q. On the day you were in Vawter Parker's office, the attorney's office, Mr. Stegmann was there and Mr. Parker and Mr. Winans; is that right?

A. Yes.

Q. Was anything said about how they were going to pay for the [987] property?

A. Mr. Stegmann had a personal check there.

Q. Tell us about that.

A. Well, he was going to pay for it with that. Mr. Winans' attorney said it was such a large sum involved that he would advise that he require a certified check instead of a personal check and Mr. Stegmann was rather upset about that because that required another trip up to——

Q. Did he say it would require a trip?

A. Yes, it would require another day, another trip. He was kind of peeved about it, that they wouldn't accept his personal check but he finally agreed to furnish one, a certified check.

The Court: Did he say that he would have to make a trip some place to get that check?

The Witness: Yes, as I recall, I had the impression he had to come down to Portland and go to Salem or somewhere in that area, then come back the following day.

The Court: Was it McMinnville?

The Witness: Well, it could have been McMinn-

(Testimony of Retlaw Haynes.)

ville, but it was somewhere where he had to pass through Portland.

The Court: Do you know who Mrs. Chet L. Parker is?

The Witness: No.

The Court: She is the lady in between Mr. Parker and Mr. Stegmann.

The Witness: Yes. [988]

The Court: Did you see her at Hood River at any time?

The Witness: I didn't see her to know her if I did see her. I never knew who she was.

The Court: You don't recall ever having seen her?

The Witness: No.

Q. (By Mr. Krause): Mr. Haynes, you testified that you were back there again on August 25th and 26th, and I am going to hand you—were you paid that day, too, by Mr.—that is, on the 26th?

A. 26th?

Q. By Mr. Winans? A. Yes.

Q. For your services and those of the other surveyor that was with you?

A. Yes, I believe he made it all out to me, as I remember.

Q. Yes, the check is made out to you. It is Exhibit 328-B. Is that the check that was given you on the second day you were up there?

A. Yes.

Q. That was in payment of surveying services?

(Testimony of Retlaw Haynes.)

A. For that Saturday and Sunday by Mr. Kuns and myself.

Mr. Krause: I would like to offer those two checks. One is 328-A. They will have to be remarked by the reporter. And the other is 328-B.

The Court: Any objection? They may be [989] admitted.

(Check dated August 26, 1951, to R. W. Haynes for \$143.00, previously marked Defendants' Exhibit 328-A for identification, was received in evidence.)

(Check, dated August 18, 1951, for \$90.00, to L. A. Bogar, previously marked Defendants' Exhibit 328-B for identification, was received in evidence.)

Mr. Krause: I have no further questions.

The Court: Any further questions?

Cross-Examination

By Mr. Jaureguy:

Q. Did you say that Stegmann, on Saturday, the 8th, Stegmann had a personal check there?

A. It was that Saturday. I guess it was the 8th.

Q. You were not there the following Monday?

A. No, it was a Saturday he had a personal check.

Q. He had a personal check?

(Testimony of Retlaw Haynes.)

A. That is what he said. I didn't look at the check, but that is what was said.

Q. Well, do you know whether the deed was ready to be delivered on that day?

A. Well, I don't know about that. That was not part of my business, and I just don't recall if I heard the deed was ready or not, except that this paper that he refused to sign, whether [990] that was a deed I am not sure.

Q. Do you know what he said, was that he had a personal check, or whether he asked whether they would take a personal check?

A. Well, he said he had a personal check.

Q. But he didn't take it out of his pocket, so far as you know?

A. I can't remember whether he did or not.

Q. You have indicated that you left there before Stegmann and his brother left. You are not sure of that, however?

A. I didn't say I left before they did.

Q. I am talking about—I beg your pardon, I am talking about the 18th. I should have called that to your attention, the 18th, when you were down at the Winans' place.

A. The 18th?

The Court: He did not so testify.

The Witness: That was the first trip.

Q. (By Mr. Jaureguy): Oh, yes, you testified that the Stegmanns left before you did?

A. Yes.

Q. I have got that all balled up. But you are not sure of that?

A. Well, I am quite sure of it.

(Testimony of Retlaw Haynes.)

Mr. Jaureguy: All right. That is all.

The Court: Mr. Ryan?

Mr. Ryan: I have no further questions.

The Court: That is all, Mr. Haynes.

(Witness excused.) [991]

The Court: We will take a recess.

(Brief recess taken.)

CLAUDE PARROTT

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Parrott, you are employed by the United States Forest Service? A. Yes.

Q. In the month of August, 1951, I believe you were stationed at the Parkdale Station?

A. That is right.

Q. How far is the Parkdale Station from Lost Lake? A. Oh, probably 17 miles.

Q. And are you acquainted, or is that part of the land within your jurisdiction? A. Yes, it is.

Q. And are you acquainted with the property involved in this litigation?

A. Not other than knowing where it is.

Q. Have you been on the property?

A. No.

Q. Now, Mr. Parrott, did you have occasion to talk with some [992] men on August 13th, 1951, in regard to this property? A. Yes, I did.

(Testimony of Claude Parrott.)

Q. How do you fix that date?

A. We keep a diary of the activities during the day for payroll purposes, and I had written it up, and at a later date I had written down about these men coming in and inquiring about some property.

Q. I will have the bailiff hand you Exhibit 71. I will ask you if that is a photostatic copy of the page from your diary to which you have made reference?

A. Yes, it is.

Q. Does that diary indicate the time of the day on August 13th that these men were in your station?

A. No, it does not. It says there that at 5:45 I returned back to the Parkdale Ranger Station.

Q. You had been out on a field trip that day?

A. Yes, I had.

Q. You came back to the station at 5:45?

A. Yes.

Q. Were these men waiting for you when you got back?

A. Yes, these two men were at the office at that time.

Q. Who were the two men?

A. They did not introduce themselves.

Q. Have you since found out who they are?

A. Yes, I have. [993]

Q. Who are they?

A. I found out later they were Walter Stegmann and Chester Parker.

Q. Do you recall Mr. Stegmann and Mr. Parker as the men you saw on that day?

A. Yes, I do.

Q. All right, now, will you just relate to the

(Testimony of Claude Parrott.)

Court what your conversation was with them on that day?

A. Well, as my diary states, I got in approximately at 5:45 and walked in the office, and the regular clerk that day had his day off because during the summer time they work a split shift and this other person was filling in in the clerk's place. He was not accustomed to the ownership books which we have, and so when I walked in he asked if I could help him a little bit.

I asked them what they wanted. He said—these two men said they were interested in some property at Lost Lake and they wanted to know about this property, so I asked them. They told me where it was. I got the status book which we have.

Q. Now, right at that point, let me hand you another exhibit, Exhibit 72. I will ask you if that is a photostatic copy of a status book of the plat that you had there in your ranger station?

A. Yes, this is one out of the office.

Q. All right, go ahead with your conversation.

A. Then, as I brought this book over, I probably laid it up on [994] the counter there, which I usually do, or if somebody is in there, why, they come back to the back office and when he give me the description and I looked at it, why, then I told him it was questionable property according to our status book.

Q. Questionable property?

A. Yes, as to the ownership, and so then we went

(Testimony of Claude Parrott.)

on and talked a while and these two men had been up at the lake that day and they had found this one section line board up there on the trail that goes around, and they didn't seem to think that was just on the line, and I told them that the section lines were fairly close lines; they were just a ready fast means during the summer time in case of a lightning fire or some other type of fire up there, and we have short-time employees around who can locate themselves, get in there with them. So then they understood that, and then we went on and talked a while longer, and so then, during the course of the conversation, Mr. Petersen come in.

Q. Mr. Petersen is an associate of yours that works for the Forest Service?

A. Yes, he is, he is a district assistant. And so, as he come in, why, he come over and started talking with us also, and then these two men—this one man which I assume to be Mr. Parker was doing all the talking, most of it, ninety per cent probably, so just before they got ready to leave he said, "Well, if it is questionable property," he said, "There is one way to tell," he says "If I got property I can go up and fall a tree and you can [995] bring suit against me, and if you fall a tree I can bring suit against you." He said, "That is the best way to settle this case," or words to that effect. It might not be just as he said it, but it was words to that effect.

Q. All right, now, was there any conversation about some signs on the property?

(Testimony of Claude Parrott.)

A. Yes, there was.

Q. What was that?

A. He asked me what we done if we come across these Bull Run Water Division signs which are posted down the line on the Portland watershed, by an Act of Congress. I told them as far as I was concerned if we had business in there, it didn't bother us at all because we had to get in there, and I said I didn't know in his case. I said—I don't know whether I told him about whether a trail goes through or not.

Q. I don't know what you mean about the signs bothering you?

A. Well, in our official work if—just for an example, we used to run a telephone line into Bull Run Lake, which is quite a ways inside of the Reserve. Well, as long as we had work in there working this telephone line, we would work the line in, then come back out again, but as far as us going in there just on a pleasure jaunt and looking around, why, we don't do that.

Q. Here is what I do not understand. As I understand, these men told you about some signs that were posted on the property?

A. Yes, yellow signs. [996]

Q. What do those yellow signs say?

A. Oh, it has been so long since I looked at one, but I believe they say, "Closed to the public by Act of Congress" and gives a date.

Q. Did they say anything about Bull Run Timber Reserve?

A. Bull Run Watershed.

(Testimony of Claude Parrott.)

Q. Bull Run Watershed?

A. I believe that is the way it states.

Q. It is those signs that they asked you about?

A. It is those signs, yes.

Q. Do you know where those signs were with reference to this 40-acre tract?

A. No, I don't.

Q. They didn't mention where the signs were?

A. I don't believe so.

Q. What was your explanation to them about the signs?

A. I told them as far as we were concerned it did not make any difference about us going in there and working, but in their case I didn't know what it would be when they were back in the Bull Run.

Q. What did you tell them about the question as to title on those 40 acres?

A. Well, I told them that their 40 acres was in question, that, however, the property that they were inquiring about——

The Court: I cannot understand that. You told them that [997] the 40 acres was in question, and I didn't follow you from that point on.

The Witness: And that, however the Winans did have, definitely owned the front part of that on the lake, so far as I could tell from the status book.

Q. (By Mr. Strayer): Now, did you show them the status book?

A. I probably did. I don't know whether I did or not because I just took it, laid it up there. We was all standing right there around a counter.

(Testimony of Claude Parrott.)

Mr. Strayer: First of all, your Honor, I would like to offer in evidence at this time Exhibits 71 and 72.

The Court: Any objection?

Mr. Jaureguy: I have not seen 72.

The Court: 71 is admitted.

(Document, photostatic of page from Forest Service diary, previously identified as Plaintiff's Exhibit 71, was received in evidence.)

Mr. Jaureguy: There will be no objection. I would like to examine it further later.

Mr. Ryan: I have no objection either.

The Court: It may be admitted.

(Document, photostatic copy of plat from status book of Forest Service, previously marked Plaintiff's Exhibit 72 for identification, was received in evidence.)

Q. (By Mr. Strayer): I notice on your land status record, Mr. [998] Parrot, under the heading of "Winans, Section 16," you have written in "Lot 1." Then you have a check mark under the north-east of the northwest, and then out to the right in parentheses the words are written "Lot 1 only."

A. That is probably right.

Q. Do you remember talking to Mr. Parker and Mr. Stegmann about that notation in the record?

A. Well, I just mentioned the fact that that back forty was questionable.

Q. I notice on the plat attached to the status rec-

(Testimony of Claude Parrott.)

ord, Exhibit 72, I notice that on the 40-acre tract the words are written in here—I am not sure that I can read those words—it looks like “Title” something or other. Can you read those words, Mr. Parrott? A. No, I can’t on this.

Mr. Buell: The original document is in the Clerk’s custody. Perhaps we had better clear that up with the witness.

(Document tendered to witness.)

Q. (By Mr. Strayer): Can you read the words there on the 40-acre tract?

A. “Title not clear.”

Q. “Title not clear.” Now, was that pointed out to Mr. Stegmann and Mr. Parker on August 13th?

A. If they looked at the book they probably noticed that.

Q. Do you recall any mention in your conversation there about [999] the plat at the Title and Trust Company office? A. No.

Q. How was the conversation left? Was it suggested that they see anybody else regarding the matter?

A. Well, yes. As they left, I told them that Mr. Cooke from the Portland office on timber management, along with Ranger Holthy and the timber manager from our district would be in Lost Lake the next morning. They would be in there because I had taken their pickup or panel in for them, that they would be at the lake the next morning probably until 7:30. If they wanted to clear up some

(Testimony of Claude Parrott.)

more of this, they could go up to the lake the next morning and talk to them.

Q. Now, from that time until this trial, when you came to this trial, have you seen either Mr. Stegmann or Mr. Parker? A. No.

Q. Did you recognize them when you came in the courtroom? A. Yes.

Q. Do you know who made the notation on these records in your office?

A. That "Title not clear," looks like Stanley Walters' writing.

Q. Who is Stanley Walters?

A. He is a retired District Ranger.

Q. Do you know where he is now?

A. Yes.

Q. Where is he? [1000]

A. La Jolla, California.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. I take it from your testimony, then, that it was almost a year and a half after this occasion of August 13th before you had occasion to try to identify the two men that were there?

A. Yes, that is right.

Q. Can you tell us how the man that you think was Mr. Parker, how he was dressed on that day?

A. Yes, he had on a hat. He had on a green cruiser's coat, and that is all I could see. He was

(Testimony of Claude Parrott.)

standing against the counter. I didn't notice the color of his trousers he had.

Q. How tall was he?

A. Well, the one I assumed to be Mr. Parker was probably five foot twelve, five foot nine, five foot ten.

Q. Was he taller or shorter than the other man?

A. He was shorter.

Q. Five foot nine or five foot ten, you say?

A. Approximately, I imagine. I mean, I didn't pay much attention.

Q. Of course, I take it that it would be impossible for you to try to describe him without having in your consciousness what you may have seen in here that you have identified this man?

A. Well, I looked him over pretty good that night in the office [1001] there.

Q. What was the occasion of that looking him over so good?

A. Well, it was just that—it seemed to me like they was doing an awful lot of talking, and I was just kind of listening.

Q. Now, do you have a Metsker map up there, too? A. Yes, we have.

Q. I show you Exhibit 110 and ask you whether that page is a copy of the same Metsker map you have there?

A. That I could not say because I never look through Metsker unless I want to look up some property, and property changes so fast that they are really not too accurate anyway.

(Testimony of Claude Parrott.)

Q. Taking this Exhibit 72, the Land Ownership and Protection Status Record, if we look only on the left one-half of the first sheet of that, that indicates that Winans owns the northeast quarter of the northwest quarter of that property; does it not?

A. The what?

Q. The northeast quarter of the northwest quarter of that section.

A. There is a check mark there, yes.

Q. What do those check marks indicate?

A. That is the approximate location of the property.

Q. What property?

A. That is being described by these numbers (indicating).

Q. Well, now, can you tell by looking at this property, by looking at this sheet, what property the Oregon Lumber Company [1002] owns?

A. Yes.

Q. And they own the northwest quarter—well, now, here's a check mark, the northeast quarter of the northwest quarter, and a check mark opposite Winans' name, and does that indicate that he owned the northeast quarter of the northwest quarter?

A. Not necessarily.

Q. What does it mean?

A. Well, it is supposed to be that they own that, but you have also got to go on through here and read the remarks.

Q. I am saying this, that if you merely look at the left-hand portion of the sheet and do not

(Testimony of Claude Parrott.)

look at the right-hand portion, that shows that Winans owns it; does it not?

A. Yes, if you just look at that.

Q. That is what I am saying. A. Yes.

Q. Now, this "Lot 1 only" that is on the right-hand portion, that was written after the other words that are on that right-hand portion were written?

A. It is probably a different person's writing because here different people work on these. There is no one certain man, and maybe that was written at the same time, you can't tell.

Q. By a different man?

A. By a different man. Maybe somebody had it in there and somebody else went through and checked it, and they put this in. [1003]

Q. But on the left-hand portion of this sheet it shows that Winans owns Lot No. 1 and also the northeast quarter of the northwest quarter, and then when you go over to the right-hand portion it says "Lot 1 only"?

A. It says here "Approximately 25.8 acres."

Q. Yes, that was written also by a different hand than the rest of the figures in that column, wasn't it?

A. Who wrote those figures there, the writing was E-S-M. That is a timber man there, his figures, evidently, because he has got them down there 1939.

Q. The figures, you mean, were log figures?

A. He has checked the book. Maybe the original figures were put in there in 1935.

Q. Well, yes, but this approximately 25.8 were

(Testimony of Claude Parrott.)

not part of the original figures; that is correct, isn't it? A. Evidently so, yes.

The Court: You say the other figures were put in there in 1939?

The Witness: Some of them could have been put in there any time after 1939.

The Court: Any time after that?

The Witness: Yes, each year these are brought up to date, or they were at that time. Now, we do not bother about filling them out here.

Q. (By Mr. Jaureguy): On the next sheet where there is written [1004] in the square representing the northeast quarter of the northwest quarter of that Section 16 "Title not clear," you couldn't say when and by whom that was written in there? A. That is Stanley Walter's writing.

Q. Stanley Walter's writing? A. Yes.

The Court: When did he retire?

The Witness: June, 1947, I believe.

Q. (By Mr. Jaureguy): Coming back again to this first sheet of this status record, Winans is the only one there that is shown owning any property in Section 16; that is correct, isn't it?

A. That is correct.

Q. Originally that was W. R. Winans, but later that was changed to Ethel Winans; that is correct, isn't it? A. Evidently.

Q. So that if you look on the left-hand portion of this piece of—this page, and then disregard the right-hand portion, Ethel Winans is shown as owning Lot 1 and the northeast quarter of the north-

(Testimony of Claude Parrott.)

west quarter of Section 16?

A. According to the left half, yes.

Q. This "Title not clear" is intended to mean that the title of Ethel Winans is not clear?

A. That is right.

Mr. Jaureguy: You may take the witness. [1005]

Cross-Examination

By Mr. Ryan:

Q. Were you in the courtroom before today?

A. Yes, I was.

Q. Was defendant Stegmann pointed out to you?

A. No, he was not.

Q. You say it is your recollection that this happened in the evening? A. Yes, it did.

Q. Your recollection has it that Mr.—the man you thought to be Mr. Parker did most of the talking? A. He did.

The Court: Were you here a week ago or two weeks ago?

The Witness: Yes, I was.

The Court: Did you hear either of them testify?

The Witness: I heard Mr. Parker, yes.

The Court: Could you recognize him from his voice as well as from his looks?

The Witness: No, that first day that I come down when we got subpoenaed, the first day I come up the elevator early just to see if I could recognize the couple men that I had seen before. I done that on my own.

(Testimony of Claude Parrott.)

The Court: Were both of these men in the courtroom then?

The Witness: No, they come up the stairs [1006] later.

The Court: Did you recognize them as soon as they came in?

The Witness: Yes.

The Court: They were not pointed out to you?

The Witness: No.

The Court: Was that the first time you had ever seen them since the time they were in your office on the 13th of August?

The Witness: Yes, it was.

The Court: Had you seen pictures of them in the meantime?

The Witness: No, I had not.

The Court: Mr. Krause?

Mr. Krause: Nothing.

The Court: Mr. Strayer? Do you want to ask him any more questions, Mr. Jaureguy?

Mr. Jaureguy: I would like to show this to Mr. Parker, if I can.

The Court: Mr. Strayer?

Redirect Examination

By Mr. Strayer:

Q. I am not clear in my mind on your testimony about somebody's retirement. Who was it that retired in 1947? A. Stanley C. Walters.

Q. The man that made the notes on the [1007] record? A. Yes.

(Testimony of Claude Parrott.)

Q. Now, do you know whether any of these notations that we were inquiring about, such as "Lot 1 only" on the first page, and "Title not clear" on the plat, were either of those notes made after August 13, 1951, or were they on there at the time that these two men were in your office?

A. I don't believe that they have been changed, not to my knowledge.

Q. Since August 13, 1951. Now, I wonder—I have a little trouble reading the notation on the diary. I wonder if you will help me read that entry?

A. Which one?

Q. The last entry in your diary.

A. "Two men in to talk about Winans' land at lake."

Mr. Strayer: That is all.

Recross-Examination

By Mr. Jaureguy:

Q. Do you make entries on this status book?

A. Yes, I have.

Q. None of these entries, however, are in your handwriting?

A. I don't believe so.

Q. How many men are there up there that make entries in this status book?

A. Probably four or five.

Q. Have any of them made entries on this [1008] page?

A. I do not know.

Q. Would you recognize the handwriting, "Lot 1 only"?

A. No, I do not.

(Testimony of Claude Parrott.)

Q. Could that be one of the men that is there now? A. I do not know.

Q. What about "Title not clear" on the next page? You do not recognize the handwriting either? A. Yes, I do.

Q. Oh, I think you testified to that?

A. I did.

The Court: He testified that the man who made that entry retired in 1947.

Mr. Jaureguy: Yes, I recall now.

When you saw Mr. Stegmann and Mr. Parker the first time you came in the courtroom, were they together? A. They were not together.

Q. Where were they?

A. They come in separately.

Q. One right after the other, or how long apart?

A. I believe Mr. Parker come in ahead of Mr. Stegmann.

Q. Then how long after did Mr. Stegmann come in? A. Oh, probably five minutes or so.

Q. In this Forest Service meeting on August 13th, were you in there when these men came in, or did they come in——

A. These men were in there when I came in. The car was [1009] out in front of the office when I come around with the truck driver.

Mr. Jaureguy: That is all.

The Court: Do you recall what kind of a car they had?

The Witness: It was a two-door car, fairly late

(Testimony of Claude Parrott.)

model, about a '50 or '51. It had Washington license plates on it. "G" was the first number.

The Court: Was it sort of a station wagon or——

The Witness: No, it was not; it was a two-door car.

The Court: Go ahead.

Mr. Strayer: That is all, Mr. Parrott. Thank you. Do you want to take these original records back?

The Court: Well, the original documents may be taken back and the photostatic copies substituted in the meanwhile.

Mr. Strayer: We have the photostatic copies. That is all, Mr. Parrott, thank you.

The Court: You are excused from further attendance at the trial.

(Witness excused.) [1010]

JOYCE PETERSEN

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Petersen, you are also employed by the United States Forest Service, are you not?

A. That is right.

Q. In the summer of 1951, you were stationed at the Parkdale Station in Hood River County?

A. That is right.

(Testimony of Joyce Petersen.)

Q. Now, did you have occasion during the summer of 1951 to meet Walter Stegmann?

A. Yes, I did.

Q. By Walter Stegmann, I refer to the gentleman here——

A. In the blue suit.

Q. ——in the dark blue suit.

A. That is right.

Q. On what date did you first meet Mr. Stegmann?

A. Oh, I couldn't say. It was along, I believe, in the spring of 1951, possibly May or June.

Q. Will you tell us where the meeting was and just what happened?

Mr. Jaureguy: Object to that as far as Parker is concerned as not binding on him. [1011]

The Court: You do not have to make that objection any more, Mr. Jaureguy. I will assume that you make it.

Mr. Jaureguy: Very well. Thank you.

The Witness: Well, he stopped into the ranger station office inquiring about some land that was owned by a private individual and the timber rights was reserved by Hood River County, and he introduced himself to me as Stegmann and made those inquiries about this land. That is where I first met him.

Q. What type of land did he say he was interested in?

A. Well, he led me to believe that he was a cattleman, and he wanted to get this timber off of this county land, or off of this—this timber off of

(Testimony of Joyce Petersen.)

this private land which was held by the county, and he was trying to find out some way that he could get rid of that county timber off of this land so that he could plant grain, grass and raise cattle.

Q. How long did you talk with him on that occasion?

A. Oh, probably 20 minutes, 15 minutes, maybe.

Q. Was anybody else with him?

A. I believe there was somebody out in the car, but he was the only one that came into the office.

Q. All right. Now, when was the next occasion that you saw Mr. Stegmann, if you ever saw him?

A. The night of August 13th, the night that they were in inquiring about the Lost Lake timber. [1012]

Q. Where had you been on that afternoon, Mr. Petersen? A. On August 13th?

Q. Yes.

A. Oh, I don't recall. I imagine out in the field. Unless I had my diary I don't recall where I had been.

Q. Were you there when Mr. Stegmann arrived at the ranger station? A. No.

Q. Who was there when you got there?

A. Well, there was Claude Parrott and Mr. Stegmann and Mr. Parker.

Q. Had you met Mr. Parker before that time?

A. I had not, no.

Q. All right. Now, just go on and relate what conversation took place after you arrived there on August 13, 1951.

A. Well, there wasn't very much. I was just

(Testimony of Joyce Petersen.)

in on the tail end of it, but, as I recall, they had this status book that has been in question here for the last 10 or 15 minutes here, laying out on the counter. and Mr. Parker, or the gentleman—at that time I didn't know that he was Mr. Parker. I knew Mr. Stegmann but I didn't know Mr. Parker. He was doing all the talking, and he asked me, he says, "What do you know about this question mark on this?"—the status book we have here. And I says I didn't know much about it except that the title to that piece of property was in question, and [1013] he wanted—I suppose he asked me if I knew what it was, and I didn't. I didn't know what it was. and he said, "There would be one way of clearing it up, would be to go up there, make the trespass by cutting a couple of trees, and you would have to come up and stop us. Then we would have a trespass case and we could get the title cleared up on it." And he also asked me about a section line board that we had posted on a trail going through there. He wanted to know what it had—on this section line board somebody had put a quarter corner on there which should not have been on this board. He asked me about that. I told him it didn't amount to too much. It was just a board that we had stuck around in the brush to identify section lines where they go through the brush, and it went to a meander corner instead of to a one-fourth corner, and that was just about all the conversation I had because they were just get-

(Testimony of Joyce Petersen.)

ting ready to leave, and I just came in the evening there as we was closing up.

Q. Have you ever been on this Lost Lake property that we are talking about here?

A. Yes, I have.

Q. Are there any signs there on the property, any Government signs of any kind?

A. I couldn't say, but I don't believe there is any more than this section line marker.

Q. I am referring to these Bull Run Water Reserve signs [1014] that Mr. Parrott was talking about. Do you know of any signs of that kind around there?

A. I couldn't say. But they run all over our district from the west end of it. These signs are posted on the whole boundary. Whether or not they were on this particular forty I couldn't say.

Q. Do you recall hearing any conversation about the signs on August 13th, when Mr. Parker and Mr. Stegmann were in there?

A. No, they had probably talked about that before I came in.

Q. You say that Mr. Parker asked you about a question mark. I wonder if you can indicate the question mark that you mean, or did you mean question mark for a question?

A. It was this here "Title not clear," this piece right in here (indicating).

Q. Oh, the words "Title not clear" indicate a question mark; is that what you mean?

A. Well, I had it in my head that that was a

(Testimony of Joyce Petersen.)

question mark on there instead of that "Title not clear" because I don't remember really paying much attention to it at that time.

Q. Well, does this refresh your recollection? Does this exhibit refresh your memory on what was on it at that time?

A. Well, no, I don't even believe I looked at it because I knew about this here—on this particular sheet, as you can see, that is the only private ownership that is on it, and [1015] we only have this quarter interest on it, and I didn't even look at it when we was talking about it at that time. They had discussed that before I came in.

Q. What you mean, I take it, is that Mr. Parker asked you about if you knew anything about the question as to title or words to that effect?

A. Yes.

Q. I see.

A. Yes, that the title is in question on the forty.

Q. Now, from that day until the time that this trial started, have you seen either Mr. Stegmann or Mr. Parker? A. I don't believe that I have.

Q. Is there a question in your mind as to the identity of Mr. Stegmann or Mr. Parker?

A. No.

Q. As being the two men that you saw on August 13th, 1951? A. No, there is no question.

Q. Did you recognize them when you first saw them? A. I did.

Mr. Strayer: That is all.

(Testimony of Joyce Petersen.)

Cross-Examination

By Mr. Jaureguy:

Q. Did you see them up there at Lost Lake in September of 1951? A. No, I didn't. [1016]

Q. With Mr. Holtby?

A. No, I was not with him.

Q. You were not with him, and you think—you have not seen him since August 13, 1951?

A. Not until we came down to the case down here.

Q. You are rather certain it is the same man?

A. Yes.

Q. Do you remember how he was dressed?

A. Yes, I do.

Q. How was he dressed?

A. He had a cruiser's coat on and practically cruiser's gear all the way down except I didn't see what he had on his shoes, what kind of shoes he had on, but he had a regular cruiser's coat, and he had a hat and he had an open shirt just like cruisers would have, regular woods clothes.

Q. Was he there when you came in, or were you there when he showed up?

A. No, he was there when I came in. I came in late that night from the field.

Q. About what time?

A. Oh, I presume it was six o'clock, maybe a little after, right around six.

Q. Was Mr. Parrott there at the time?

(Testimony of Joyce Petersen.)

A. Yes, he was; he was talking to the two gentlemen.

Q. You say one of them asked you about a question mark? [1017]

A. Yes, that was—Parker did all the talking. Stegmann never said a word after I came in.

Q. You told him you didn't know what the question was of the title?

A. No; no, I didn't know what the question was.

Q. Well, your knowledge that the title was in question, that was derived from the status book; is that right?

A. That is right, from the status book and from the talk which had been rumored around because it was just that one piece up there around the lake, and we had been trying to get control of the property around the lake.

Q. You had been trying to get control of the property around the lake, you say?

A. Yes, through exchange.

Mr. Jaureguy: That is all.

Mr. Ryan: No questions.

Mr. Krause: We have none.

The Court: That is all. You are excused.

(Witness excused.) [1018]

RALPH W. COOKE

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Ralph Cooke? A. Yes.

Q. Would you please state what your occupation is?

A. I am a forester with the United States Forest Service.

Q. You are located here in Portland, are you?

A. I am.

Q. What is your job or employment with the Forest Service? What are your duties and functions?

A. The principal duty is handling the sale of national forest timber.

Q. In any particular national forest?

A. In the Mt. Hood National Forest.

Q. Now, have you been familiar with the—or generally connected with the negotiations which have been carried on from time to time by Paul Winans with the Forest Service relative to possible exchange of the land that Mr. Winans claimed to own up at Lost Lake?

A. Since 1942, when I came on the forest.

Q. 1942 is the first mention you had?

A. Yes. [1019]

Q. Let me ask you this: Have you had any training or particular experience with regard to the

(Testimony of Ralph W. Cooke.)

cruising of timber and the establishment of timber values? A. Yes, that is part of my duties.

Q. What is your classification in the Forest Service, or do you have any particular classification?

A. Well, I am a staff officer assisting the forest supervisor.

Q. Are you able to cruise timber yourself?

A. I am.

Q. Have you had any field experience in the actual cruising of timber? A. I have.

Q. How much, or just to shorten it up, would you give us just a short statement of the experience that you have actually had yourself in cruising?

A. Well, all told, I would say probably three years of actual work in the field on the cruising work.

Q. In your work in handling these timber exchanges in the Mt. Hood National Forest do you calculate your values based upon the Forest Service cruises that are made under the particular district rangers affected? A. Yes.

Q. One question in connection with this particular lawsuit: Have you ever been contacted by Mr. Chet L. Parker, [1020] one of the defendants in this case? A. No.

Q. You have never talked to him at all?

A. No.

Q. How about Mr. Walter Stegmann, another one of the defendants, have you ever met him to your knowledge? A. I have never met him.

Q. Ever talk to him?

(Testimony of Ralph W. Cooke.)

A. Never have talked to him that I can recall.

Q. Mr. Cooke, I am handing you what has been marked for identification Exhibit 63-D, which was from the Forest Service file which you brought into court here a few weeks ago, and would you please identify what that document is?

A. That is a valuation of the proponent's property in an exchange that we were proposing with Mr. Paul Winans.

Q. Does that cover a 40-acre tract and a 25.88-acre tract at Lost Lake?

A. Yes, that covers both tracts.

Q. Is that a summary of the values, or just exactly what is it?

A. That is a summary.

Q. Was that prepared by you?

A. It was prepared by me, and the notations in pencil or pen adjacent to the typed figures are, I believe, a revision of it by some member of our regional forester's office. [1021]

Q. You are able actually to identify who that man is?

A. I cannot. I do not recognize these initials. At the present time there have been a great many changes in personnel in that office.

Q. Can you tell us from that exhibit, Mr. Cooke, what was the gross volume of timber of all species on the two tracts?

A. 2,655,000 board feet.

Q. Now, in arriving at that figure, Mr. Cooke, were the culls—is there cull or defective timber included within that 2,655,000 feet?

(Testimony of Ralph W. Cooke.)

A. That is what we estimate as net volume. The defects have been deducted.

Q. Now, to explain this particular document, referring to the first page of it I see you have the—it is broken down as to the various species of fir or timber on the tract; is that correct?

A. Yes.

Q. Douglas fir, Noble fir, Western Hemlock, Pacific Silver Fir, Red Cedar and Western White Pine. Now, under the column entitled "Grade," would you state what those figures represent?

A. They represent the various grades of timber, the percentages of those grades of timber that our cruisers estimated in the stand.

Q. For example, where you have the item "No. 1 saw logs, 15%," that would—does that mean that 15% of the saw logs in [1022] Douglas fir out of the stand would grade out at No. 1 saw logs?

A. Yes.

Q. Or items to that effect. Then what is the column, "Sale Value Per Thousand"? Per thousand of what?

A. That is per thousand board feet, saw log sale value in the river at the nearest booming point.

Q. That would be somewhere around Hood River; is that it?

A. That would be Hood River.

Q. Under the column "Weighted Sale Value Per Thousand," what do those figures represent?

A. They represent the average value of the timber. In other words, the No. 1 saw logs, the average

(Testimony of Ralph W. Cooke.)

value per thousand in the river, multiplied by the 15% gives you your weighted value for No. 1 saw logs, and that percentage carried through on each of the grades gives you a set of weighted values which, added together, give you the average value of the timber.

Q. In other words, as to the particular species then, for example, under the Douglas fir, you calculated as an average value of Douglas fir timber \$21.76 per thousand? A. Yes.

Q. All right, referring to the second page of this exhibit, I notice there is a summary of logging costs there? A. Yes.

Q. What are those?

A. Those are our estimate of the costs that anyone operating [1023] that timber would be put to to place the saw logs in the river at the market point.

The Court: Do you use the same formulas as the BLM?

The Witness: No, I don't think our formulas are quite the same although we arrive probably at approximately the same values.

Q. (By Mr. Buell): What was the date of that item there, that exhibit? A. December 4, 1942.

Q. I am handing you Exhibit 63-H and ask you if you can identify what that is?

A. This is a summary of estimates of Section 16, Township 1 South, Range 8 East, Winans' property.

Q. Referring to the second page of that document, can you advise us as to when that was pre-

(Testimony of Ralph W. Cooke.)

pared? A. It is dated January 4, 1944.

Q. I notice that exhibit is in handwriting. Is that your handwriting? A. Yes.

Q. Do you remember what that particular summary was prepared in connection with?

A. That was prepared in connection with Lot 1 only after we discovered that the 40 acres was national forest lands.

Q. Would you advise us just as to what Exhibit 63-F is which I am now handing you? [1024]

A. That is the cruise sheets relating to the property at Lost Lake in Section 16.

Q. Mr. Cooke, did you ever have any conversation, direct conversations, with Mr. Paul Winans relative to the exchange of his timber or the timber that he claimed to own, with the Forest Service?

A. Yes.

Q. When were the last discussions or negotiations that you had with Mr. Winans? Can you place it approximately as to the year, 1943 or 1944?

A. I believe it was about sometime in 19—either late '43 or early '44 that the last conversations were had with him.

Q. Do you recall what value or what you had determined, considered to be the value of Lot 1 only in the early part of '44?

A. I believe it was around twenty-eight hundred dollars.

Q. Now, in arriving at a value of \$2,800 for Lot 1 at that time, was that based upon timber values alone, or were there other considerations?

(Testimony of Ralph W. Cooke.)

A. As I recall, we considered the value of some possible summer home sites along the lake shore.

Q. As to the summer home sites, the portion that you had considered for summer home sites, did you include the timber values on it also in addition to home site value? A. Yes.

Q. I will now hand you what has been marked for identification [1025] as Exhibit 63-C, which is a copy of a letter from Forest Service files dated September 24, 1943, addressed to Paul Winans and signed James C. Iler, Forest Supervisor, by Foster Steele, and then in the lower left-hand corner there are the initials "R. F. Cooke, R. H." Could you advise us as to who dictated or wrote that letter?

A. I dictated it.

Q. Referring to Page 2 of Exhibit 63-A, is that the—did you also dictate that letter, which is another letter addressed to Mr. Winans dated November 6, 1943, and signed the same way? A. I did.

Q. In your opinion, Mr. Cooke, what was the aggregate or total value of the 40-acre tract and the 25-acre tract in November and December of 1943 at the time of the last negotiations with Mr. Winans?

Mr. Krause: Well, your Honor, I would like to know what bearing that has upon the issues here, what it was worth 10 years ago or 50 years ago. I think we are concerned perhaps about the value in 1951, but not in 1944 or 1943.

The Court: I cannot see the materiality of that testimony, and I was wondering about the exhibits

(Testimony of Ralph W. Cooke.)

from which the witness testified. Unless he can show that the timber in 1943 was the same timber that was on there in 1951, or if he has a formula on which he determines growth plus—also infestation or spoilage. [1026]

Mr. Buell: We will have additional testimony on that, your Honor.

The Court: Perhaps this is premature. You have not offered the Exhibits yet.

Mr. Buell: I was going to offer the Exhibits. We will offer Exhibits 63-D, E, F, G, and H.

The Court: Any objection?

Mr. Krause: We do not even know what they are, your Honor. We have not copies of them.

The Court: Those are the Forest Service cruises and the appraisals made by Mr. Cooke.

Mr. Buell: Counsel have all had opportunity to examine these.

Mr. Ryan: We have not examined them, but we do not know which ones he is now referring to.

Mr. Krause: We have the numbers. But they don't give us copies. All this stuff they have had photostatic copies made, but they never offered us any.

The Court: The last Exhibits are letters which were addressed to Mr. Winans. Incidentally, you have not yet offered those Exhibits.

Mr. Buell: 63-A was offered yesterday in connection with the testimony of another witness. I was just asking, was clearing up the point as to the letter which was purported to have been sent by another

(Testimony of Ralph W. Cooke.)

man but Mr. Cooke was the one who [1027] did it——

The Court: Now, the Exhibits which you have offered are the cruising reports and the summaries made by Mr. Cooke as to the amount of timber and the value of timber in 1944 and 1943?

Mr. Buell: And that is from the official records of the Forest Service as to that particular tract, and it contains the most recent records of a cruise. I think, if I am not mistaken, they are trying to put me in the bite by saying they do not have the copies when they got whatever Exhibits over there that I furnished them at our expense.

Mr. Krause: We cannot tell, the way they are going in we cannot tell which of these papers are the ones.

The Court: Now that you know the numbers, Mr. Krause, do you want to make a statement?

As I understand it, Mr. Jaureguy, you have no objection to these Exhibits being admitted?

Mr. Jaureguy: Well, I think they are awfully remote and indirect, but I'm not going to raise any question.

Q. (By Mr. Buell): Mr. Cooke, have you been up on the Winans, what we have been referring to as the Winans tract of timber recently?

A. I have not.

Q. About when was the last time you were up there, if you could recall? [1028]

A. Oh, I imagine it may be 6 or 7 years since I have been on it.

(Testimony of Ralph W. Cooke.)

The Court: Mr. Krause, have you anything to say now?

Mr. Krause: We are making no objection to them.

The Court: All right, they may be admitted.

(Documents, letters, cruises, and appraisals, previously marked Plaintiff's Exhibits 63-D, E, F, G, and H for identification, were received in evidence.)

Q. (By Mr. Buell): Mr. Cooke, could you give us an opinion as to whether or not the footage of the particular species, according to the cruise on that property would be more or less at the present time than it was at the time of the last cruise in '43?

A. I could not because without a recent examination of the property I would not know how much has been blown down or killed by insects or destroyed by fire.

Q. Most of this timber up there is old growth; is it not? A. Yes.

Q. Is the increase in volume, or is there much increase from year to year, or in a 10-year period is there much proportionate increase in volume as a result of growth on a stand of timber of the age of the timber on that tract?

A. Yes, might be some.

Mr. Buell: I have no further questions. [1029]

The Court: Mr. Jaureguy?

(Testimony of Ralph W. Cooke.)

Cross-Examination

By Mr. Jaureguy:

Q. Over a period of 30 years, 30 or 35 years, it increases somewhere between a quarter to forty per cent, doesn't it?

A. I couldn't make a definite statement on that because there is so many factors entered into it.

Q. That is why I add an upper and a lower.

A. You have young growth timber that grow very fast. If it is on good growing ground it could grow very fast. If it is on poor growing ground, it might grow slow.

Q. Could you give me the lower and the upper limits then that you would say in 35 years?

A. Oh, it might be anywhere from zero to forty per cent.

Q. Your upper?

A. Or it might have been even a minus picture.

Q. Your upper was the same as mine, but the lower was considerably lower than mine?

A. Yes.

The Court: Why do you take a figure of 35 years, Mr. Jaureguy?

Mr. Jaureguy: This particular one is only 7 or 8 years. I can tell you, your Honor, if your Honor won't scold me, that they have some evidence here of something that was done in 1915 and I was merely anticipating that so I would not have to call him back and question him later. [1030]

(Testimony of Ralph W. Cooke.)

The Court: All right, go ahead. Any further questions?

Q. (By Mr. Jaureguy): There are a lot more of these exhibits that you have not even shown me, but I assume that you are going to go into those later.

Mr. Buell: In the Forest Service file?

Mr. Jaureguy: I don't know where.

Mr. Buell: There are more exhibits in the Forest Service file but there is none that we propose—

Mr. Jaureguy: The rest of the file you are not proposing to show? Is there anything in here that he knows anything about?

Mr. Buell: There might be. I don't know of anything in it of any particular materiality, however.

Q. (By Mr. Jaureguy): Did you have negotiations with Mr. Winans about the exchange of this timber with the Government? A. I did.

Q. Did you have discussion with him as to the title to the 40 acres?

A. I did. I believe I had one discussion with him after we notified him by letter that the 40 acres was National Forest.

Q. When was the notification by letter?

A. I believe it was in late '43.

Q. Had he called at—had he ever discussed with you the question of the title prior to that [1031] letter? A. No.

Mr. Jaureguy: I do not think there is anything more.

(Testimony of Ralph W. Cooke.)

Mr. Ryan: No questions.

The Court: How did you discover that the title to the back forty was in doubt?

The Witness: Checking with the General Land Office records, they showed there had never been a patent issued to that forty.

The Court: When you called it to Mr. Winans' attention, did he tell you that he was aware of that fact?

A. I can't recall that he did. I am not sure that he was aware of the fact until the time.

The Court: Mr. Krause, are you going to interrogate?

Mr. Krause: Yes, I think we ought to have these letters shown to the witness because—I think it is Exhibit 63.

Mr. Buell: That little hand-written memorandum?

Mr. Krause: Well, I want that and also the letter which was written in January and not in December as the witness said.

Mr. Jaureguy: He did not say December. He said the latter part of 1943.

Mr. Krause: Well, I will put that as late as I can, in December, but it was written in January of the next year.

Mr. Jaureguy: Well, I think that you and the witness are not talking about the same thing. [1032]

(Testimony of Ralph W. Cooke.)

Cross-Examination

By Mr. Krause:

Q. Mr. Cooke, apparently the discussions in your office with Mr. Winans were held by Mr. Steele rather than yourself?

A. Discussions with people who come into the office are, may be held by anyone in the office who happens to be in at that time.

Q. Well, here is a memorandum addressed to you, Ralph, initial S, which says that in October of that year, Mr. Winans and Mr. Steele already discussed this matter of the defect in the title, will you examine the exhibit, please?

A. Yes, apparently this exhibit is in Mr. Steele's handwriting, and it is addressed to me. However, it is October, 1923, and he apparently didn't put in——

Q. Well, that came out of your file—in 1943, that is, it came out of your file, the Forest Service file, in connection with other letters that were in October, 1943.

The Court: Have they been admitted in evidence?

Mr. Krause: That is in evidence.

The Court: Why don't you admit the—I mean offer the other letters?

Mr. Krause: Well, I just want to point out that, of course, we could stipulate this because the file shows, but let us see if we can agree on this, and we do not need it: That on December 6, 1943, the

(Testimony of Ralph W. Cooke.)

Forest Service here asked for [1033] a status report on those 40 acres; that they wrote to Washington, D. C., from the Portland office asking for a status report and then on December 13, 1943, Ira J. Mason here in the Portland office wrote to the Forest Supervisor, Mt. Hood Station, that they had requested such a status report. That is under date of December 13, 1943, and this letter advises the Forester up there not to discuss the matter further with Winans regarding exchange until they get a report on the status of the 40 acres.

Mr. Jaureguy: Let me see that.

The Court: Who are you asking to stipulate?

Mr. Krause: Well, I think we had better forget the stipulation and just admit these in evidence.

Mr. Buell: No objection.

The Court: Is there any objection to these letters?

Mr. Buell: No objection to them.

The Court: They may be admitted.

Mr. Krause: There is one more letter. That is this letter of Paul Winans, November, 1943, to Mr. Iler, Forest Service Supervisor, Mt. Hood National Forest, and Mr. Iler's reply under date of December 6th of discovering that flaw in the title.

The Court: Any objection?

Mr. Buell: No.

The Court: It may be admitted. Have they been marked? [1034]

Mr. Lindsay: They are all part of this file.

The Court: Just call them I and J.

(Testimony of Ralph W. Cooke.)

(Documents previously referred to marked Plaintiff's Exhibits 63-I and J for identification and received in evidence.)

The Court: Any further questions to Mr. Cooke? If not, that is all, Mr. Cooke.

(Witness excused.) [1035]

LYLE A. CUMMINGS

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. What is your occupation?

A. Forester.

Q. By whom are you employed?

A. I am a partner in the firm of Mason, Bruce and Girard, Consulting Foresters.

Q. Offices in this city?

A. In the American Bank Building.

Q. How long have you been engaged in that occupation?

A. I have been with the firm of Mason, Bruce and Girard for two years. I have been a forester somewhat longer.

Q. Where did you get your training in the forestry work?

A. I spent 10 years with the United States Forest Service previous to joining the firm of Mason, Bruce and Girard.

(Testimony of Lyle A. Cummings.)

Q. Do you have any college training in forestry?

A. Yes, I have a Bachelor of Science degree from Oregon State College.

Q. Mr. Cummings, did you at my request examine the timber located on the northeast quarter of the northwest quarter in Section 16, Township 1 South, Range 8 East, and also Government Lot 1 of that same section and township? [1036]

A. I did.

Q. I will ask the crier to hand you Exhibits 19 and 20.

Did you, following the making of such an examination, make a report to my office as to the timber located on that property and the value of the timber? A. Yes, I did.

Q. Will you tell us, Mr. Cummings, when it was that you made this cruise?

A. Well, I would say about the middle of November. If I can look here on this exhibit I can probably give you the date.

The Court: Why don't you ask him how he made the cruise and what he found, and with whom he made it; offer the exhibit and then offer him for cross-examination, and I think we will get along very fast.

Mr. Buell: That is what I propose to do.

How long did you take to make the cruise?

A. I believe we worked about two and a half days on the area.

Q. That is on the property? A. Yes.

(Testimony of Lyle A. Cummings.)

Q. Would you go ahead and just make a description of exactly how you went about making the cruise, how many of you there were making it or assisting you on it, and the length of time it took and the results you reach? In other words, just state [1037] in your own words what you did and found.

A. All right. We drove up to Hood River in the afternoon previous to working in this area and drove to Parkdale and talked to the Ranger at the Government Ranger Station there, Forest Service Ranger Station; inquired as to how to get to the tract and how far it was, what the roads were like, and so forth. Then next morning we proceeded to the area and had no difficulty in finding the property; went to the north quarter corner of the section in which these areas are located and started our cruise. When I say "we," I did the work myself. I was assisted by a compass man who just helps to run the lines and so forth, do some of the measuring and so forth. We worked on the two properties simultaneously; however, as we do our work we keep our records independent, one forty from another or a forty from a lot, and so on. In making our cruise, we cruised the tract eight times. We made what we call an eight-run 40% cruise. Oftentimes we will make a hundred per cent cruise or a 40% cruise or a 20% cruise customarily, and, of course, less on short properties down to ten and five and so forth, but, as a rule, on properties even being of a different size and different

(Testimony of Lyle A. Cummings.)

nature, we design the cruise individually for that property. So we cruise on a basis of 40% of the area. In other words, we estimated, measured and estimated each tree on 40% of the entire tract, and following our field work we returned to Portland, and from the result of our [1038] individual figures that we got from each plot, as we did our work, we would calculate the volume by species of the timber on the tract.

Q. I don't know whether I didn't hear or not, but did you state whether or not you counted the trees in plots of how large a diameter?

A. I didn't state, but what we do, we start on lines uniformly spaced on a tract, and we take our plots along those lines. It is a mechanical spacing process. In other words, we set forth a certain distance, 165 feet as an example, and then we start a line north or south or whatever direction we are going, and along those lines at uniform distances we take our sample plots. Sample plots are quarter-acre plots. On those sample plots we make a careful examination of each tree. We check the diameter; we measure some of the trees; some we estimate as to the diameter, and we also check the heights, and we check those trees for defect and breakage, and on each fourth plot along these lines we grade the trees that fall on the plot for grading purposes in determining the value.

Q. By grade you mean the grade of logs that will come out of that particular tree?

A. That is right.

(Testimony of Lyle A. Cummings.)

Q. How far apart are those quarter-acre plots on your lines?

A. On this ground they were 165 feet. In other words, [1039] there was a plot each 165 feet on the coordinates on the entire tract.

Q. In your lines on this tract, did you go on an east-west line?

A. Yes, we did, we ran east and west on this.

Q. Running clear through from the shore line of the lake to the west line of the 40-acre tract?

A. That is right.

Q. Did you also, in making the cruise, segregate the timber on the 25-acre tract as to a north and south division line of that tract?

A. Yes, we did.

Q. How did you locate the division line?

A. There is a line, a well-placed line between the northeast quarter of the northwest quarter and the lot——

Q. Was that line staked?

A. There were some small stakes. I don't know what the small stakes represented. It indicated that someone went through there, apparently with a transit or a level, and these were just small stakes used in that process, but the line was quite clearly placed. By places, I mean marks on the side of the trees made by an axe.

Q. Did you have a copy of the deed with the description of the lines segregating the 25-acre tract on it?

A. Yes, I did. [1040]

(Testimony of Lyle A. Cummings.)

Q. Did you survey that line in establishing where you were?

A. No, when we are doing this cruising work, we will start from a corner so that we are sure that our location is proper. Then we work from there, and a line apparently ran south from the quarter corner to that property corner to the south one-quarter mile.

Q. Then what was the total volume of timber that you found, merchantable timber that you found on the entire tract of the 40-acre and 25-acre tract?

A. 2,893,000 board feet.

Q. What was the total volume of defective or cull timber that you found?

A. Well, I have on the two tracts, one of them I have 1,274,000; on the other 549,000, which would be somewhere in the neighborhood of 1,800,000 of cull.

Q. What was the general nature of the defects which you found in the timber which you classified as culls?

A. This stand that is in question is quite an old stand, and a large part of the volume was made up of very old and over-mature Western Hemlock. These old hemlock trees, in quite a great portion of them, had broken tops, and others had these large shelf-like conks growing out to the side. A conk is a fruiting body of fungus which decays the interior part of the tree, and every one of those trees had rotted areas around the trunk. [1041]

Q. Are you still referring to hemlock?

(Testimony of Lyle A. Cummings.)

A. Yes, the hemlock, of course, was the most defective species in the stand. The Douglas Fir and, well, all the trees that holds true to a certain degree, only that the hemlock is subject to rot more rapidly and to a greater extent than Douglas Fir, the White Pine, and the other species on the area.

Q. Is that document that you have been referring to the report that you rendered of the results of your examination of this property?

A. Yes, it is.

Q. Did you conclude what would be the reasonable value of the timber on that property as of September, 1951?

A. Yes, I did.

Mr. Buell: We will offer Exhibit 19 in evidence.

Mr. Jaureguay: I make no objection but I want to see it. I have what purports to be a copy made in our office, and I want to see if there was a little mistake made in it.

Q. (By Mr. Buell): What is the figure that you concluded was the value for the entire tract as of that date?

The Witness: I would have to see the report.

The Court: It is \$45,172, and the Government lot is \$25,347. That leaves a little over \$11,000 for the Winans property.

Mr. Buell: I think the Court mis-read [1042] that.

Q. (By Mr. Buell): Will you hand the exhibit back to the witness, please?

Mr. Cummings, referring to the \$45,000 figure as

(Testimony of Lyle A. Cummings.)

the aggregate value of the entire tract, that was for the entire 65.88 acres; was it not?

A. Yes, it was.

Q. Then did you conclude what would be the value of the 40-acre tract alone at that time independently of the 25-acre tract, Lot 1? A. Yes.

Q. What did you conclude the value of the 40-acre tract to be? A. \$25,347.

Q. Then what did you conclude the value of the entire north half of the Government Lot 1 to be, taken by itself independently of the 40-acre tract?

A. \$9,000.

Mr. Krause: Your Honor, may I make an objection there? As I understand it, this relates to the timber only. Counsel is continuously asking as to the value of the property. Now, is he testifying as to the value of the land or value of the timber?

Mr. Buell: The witness is testifying as to the value of the timber, as I understand it.

Isn't that correct? [1043]

The Witness: That is correct.

Q. (By Mr. Buell): What did you conclude as to the value of the timber in the north part of the Government Lot 1? A. \$9,513.

Q. And the value of the timber on the south part of Government Lot 1? A. \$1,854.

Q. Now, those last three figures that you mentioned do not add up to a total value of \$45,000 which you computed for the entire tract, and would you explain the reason for that?

A. The reason for that, a value of a tract of

(Testimony of Lyle A. Cummings.)

timber depends a great deal on the quantity—manner in which it can be logged. Now, the theory here was that on the quarter section alone or on the tract as a whole it might be logged as a rather large operation, and certain roads could be built to take that out. Now, on the smaller tract here, the only way that I could see it could be logged would be on a small gyppo operation where it would be necessary for some small operator to come in and take out a few logs, and there is a possibility that he could take them over the existing roads.

I might add that on the large tract it was my understanding in talking to the Forest Service gentleman, Ralph Cooke, and some of the others, that the entire tract of timber, or the bulk such as would be represented on the northeast [1044] quarter, could not be removed over the recreation road through the recreation area on the south—the north end of Lost Lake and out through by the Guard Station and down, and that quite a piece of expensive road would have to be required in order to remove it, so that was taken into consideration on the larger tracts.

On the smaller tracts, one man, or just a few men, probably could be employed and short logs removed in a small truck and he would probably maybe have to haul his logs at night or during the middle of the week so it would not interfere with the recreation traffic to Lost Lake, if at all.

Q. One other sign question, Mr. Cummings, and that is, did you observe any United States Forest

(Testimony of Lyle A. Cummings.)

Service signs located along any boundaries of that 40-acre tract while you were up there?

Mr. Jaureguy: Objected to as incompetent, irrelevant and immaterial.

Mr. Buell: Ranger Holtby had already testified that there had been no additional Government signs placed on the property since the time of this——

The Court: All right, objection overruled. I will admit it.

The Witness: There were Bull Run Water Shed Reserve signs, Government signs along the line between the 40-acre tract and Government Lot 1. [1045]

Q. (By Mr. Buell): About how many; do you recollect?

A. I couldn't say. As we proceeded with our work, we came up to the line, first from one side, then from the other, and I couldn't say, but I saw several.

Mr. Buell: Was there any objection to the receipt of the report in evidence?

Mr. Jaureguy: No.

The Court: It may be admitted.

(Document, report of Mr. Lyle Cummings, previously marked Plaintiff's Exhibit 19 for identification, was received in evidence.)

(Testimony of Lyle A. Cummings.)

Cross-Examination

By Mr. Jaureguy:

Q. Isn't that property all water reserve whether it is Bull Run Water Reserve, whether it is Government property, or privately owned?

A. I couldn't say.

Q. Is it your understanding that a logger could use that recreation road without permission of the Government?

A. No, I don't think he could use it without permission of the Government. I am not familiar with that.

Q. Do you know whether or not they are permitted to go over those roads at night?

A. I do not know. [1046]

Q. Isn't it a fact that if they were going to log the entire area they could build a road that would, a short road that would enter in along toward the west part of the 40-acre tract and then approach the smaller tract from the 40-acre tract?

A. Yes, they could.

Q. That would be the way to do it if they were logging it at all?

A. From my very brief discussions with Ranger Holtby, I understood that a road could be laid in there coming around behind or to the west of the recreation area.

Q. If a person owned the 40 acres?

A. Yes, if a person had the 40 acres, owned the entire tract.

(Testimony of Lyle A. Cummings.)

Q. But if a person did not have the 40 acres and couldn't approach the smaller tract through the 40-acre tract, then I would think that the only way he could do it would be by the recreation road; that is it, isn't it?

A. I couldn't say as to that. There may be other possibilities which I am not familiar with.

Q. But the only possibility which you explored and are testifying about, if a person had only the smaller tract, would be by the recreation road; is that correct?

A. Yes, a previous road. In other words, this tract is so small that you couldn't spend sixteen or eighteen thousand [1047] dollars building a road to it.

Q. If you could spend all that, where would you put the road unless you got permission to put it through the 40-acre tract?

A. Well, I suspicion that you could enter Government Lot 1 near the northwest quarter of that Government lot, if you wanted to spend that kind of money to build that access road into the area.

Q. Would it be worth while? You say it would not be worth while?

A. Well, it didn't appear so to me. The total value of the timber would not be as great as the cost of the road.

Q. It would not be as great, you say?

A. That is right.

Q. After building that road, where would that road connect on to a public highway?

(Testimony of Lyle A. Cummings.)

A. That road would go to the west—would go to the north from this timbered area, and then swing to the northeast and cross the fork of the Hood River and join in with the recreation road approximately a mile north of the Guard Station.

Q. That would have to go across Government land?

A. I don't believe that you would have any problem in crossing Government land. I don't believe anyone else has unless it is a reserved recreation area or some special use area. That is my understanding. [1048]

Q. But the road you were speaking of would have to go across Government land?

A. I expect it will. I believe this is all Government-owned up there except for a few small tracts.

Q. But in logging this small tract, if you had to go across Government land, you say without using recreational roads?

A. Well, yes, if you wanted to spend enough money I think you could build a road.

Q. Across Government land?

A. Well, I couldn't say as to whether it would be across Government land. It is my thought that it probably would because I understand that the greater part of the area up in there is Government-owned.

Q. I show you Exhibit 110. Assuming that in this exhibit Metsker is correct——

The Court: I believe the witness has testified the total value of the timber as \$11,367 and that the

(Testimony of Lyle A. Cummings.)

cost of the road would be around \$16,000, so why is it necessary to pursue all these possibilities?

Mr. Jaureguy: Well, I think that this possibility ought to be pursued in the event that other witnesses testify that the value of the timber is much more.

Mr. Buell: I think, if the Court please, that he testified that the large access road through the 40-acre tract [1049] would be an expensive one, but for the purpose of a small operation to take out the timber on the north half of Government Lot 1, they could make use of the existing way trail with a small operation.

The Court: He says he does not know. That is an assumption he makes.

Mr. Buell: That is an assumption that everybody connected here has to make, that access would have to be obtained into the property.

The Court: You mean you would use the Government recreational road to get into the smaller tract, you could use that without any cost? That is the assumption that he has made, but he does not know whether that is a correct assumption or not, and he so testified.

Mr. Krause: Well, it does not say without cost, your Honor, because he is allowed certain road costs in connection with all of these estimates.

The Witness: That is right.

Mr. Krause: Even on a Government road it would mean rocking the road, something of that sort.

(Testimony of Lyle A. Cummings.)

The Court: Am I correct in my statement that you have not verified whether or not the Government recreation road could be used even early in the morning or late at night?

The Witness: No.

The Court: You have just made that [1050] assumption?

The Witness: I have assumed that the timber in there, that the owner would be allowed to remove his property if you abide by certain regulations. I just made that assumption on the basis of past knowledge.

Mr. Jaureguy: Could I get that exhibit?

The Witness: Is this the one you wish? (Presenting document.)

Mr. Jaureguy: The witness has it.

Are these pages numbered?

A. Well, no they are not. This refers to the Government Lot 1.

Q. This Lot 1, this is the sheet that I have here which gives the number of feet of each species?

A. Yes.

Q. You have Douglas Fir 160 and then the word "thousand"? A. Yes, that is correct.

Q. But do you give—what is that? Did you find any Douglas Fir on the Lot 1 that you would grade as peelers?

A. We grade our trees on the first and on the fourth plot, and the grades that apply to that timber are these grades here.

Q. This, however, is the 40-acre plot only?

(Testimony of Lyle A. Cummings.)

A. Yes, the timber is very similar, and as we ran our lines we took our grade plots as they fell. In other words, if you didn't do that, you would find bias in your grades.

Q. But on this next sheet which goes on that Government lot, you have white fir graded. Why did you grade that there? [1051] I do not quite understand it.

A. Well, the white fir fell on our grade plot. The mechanics of grading, we grade each fourth plot, and if a Douglas fir tree does not happen to fall on that plot, although there is one on that plot before and the plot afterwards, we still do not change our grading procedure.

Q. So that you would say that this sheet, that where the top portion of it only refers to the 40-acre plot, the bottom portion of it where the grading is refers to all the timber on both plots?

A. The Douglas fir, yes.

Q. But the white fir would be the white fir. You have got 44% No. 2 and 56% No. 3 there, and on the next sheet you have white fir 48% and 52%.

A. That is right, the white fir, that is just the way it fell on our plots. We graded the trees that fell on our grade plots.

Q. Why did you segregate the grading for the white fir and not for the Douglas fir? That is what I can't understand.

A. Well, you see, we didn't segregate necessarily. We would grade on the first plot—we grade on the fourth plot and the eighth plot and so on in that order, twelfth and sixteenth, and, you see, 160,000

(Testimony of Lyle A. Cummings.)

does not represent very many trees, and even though—you see, that volume of our sample, our sample included instead of 160,00 it included 40% of [1052] 160,000 because when we completed our grades, we multiplied our volume cruise by two and one-half times since it was a 40% cruise.

Q. Then what portion of the plots that you cruised did you grade?

A. That is one out of four.

Q. So that would be 10%. Only on 10% did you do any grading? A. That is right.

Q. Now, you found these peeler logs—do you make a distinction between peelers and peelable logs?

A. Well, no, peelers, we follow the Columbia River Bureau Log Grading and Scaling Rules. That is recognized in this area and we use those rules for our grading.

Q. But the plywood manufacturers have a distinction, have they, between peelers and peelables, have they?

A. I think they do; however, it is my understanding they are not bought and sold on that basis.

Q. Well, are they not like other commodities? You bargain to buy them as cheap as you can and sell them at as good a price as you can?

A. I should think that would be correct.

Q. In the southern portion of Lot 1, you found that swampy land? A. Yes.

Q. And you found—well, I guess this does not tell you— [1053] you said you have 5% of hemlock for No. 3 peelers? A. Yes, the peelers.

(Testimony of Lyle A. Cummings.)

Q. That is all you could find is 5% of those?

A. Yes.

Q. No No. 1, no No. 2, some No. 3?

A. In the grading, hemlock was graded only on our group, in other words only one grade of peelers in the 12% saw logs.

Q. What about Noble fir?

A. Noble fir is the same.

Q. Is that what is sometimes known as larch?

A. That is the true name, is larch, but it is the Noble fir tree, quite different from a larch tree.

Q. Quite different from Douglas fir?

A. Yes.

Q. Do the plywood manufacturers regard the Noble fir peelers as good, merchantable products and in demand?

A. Not particularly at this time. During the war they were considered an emergency tree to fill in behind the spruce for airplane construction.

Q. At the price that you put down here for No. 1 peelers, what would you say the final cost would be delivered in Portland? Did you figure that out?

A. No.

Q. Would you say it would be as much as \$80?

A. The cost, I don't get the—— [1054]

Q. The final cost, including stumpage, of No. 1 peelers, delivered in Portland, if a person bought this tract of timber?

A. Including stumpage and everything?

Q. Yes.

A. Well, may I see the report, please?

(Testimony of Lyle A. Cummings.)

Q. Yes.

(Exhibit presented to witness.)

A. In my work I did not separate the costs by grades. We do, as Mr. Cooke mentioned, we have a weighted figure by species, and that is what we use in making our——

Q. Well, is there any difference in the cost other than the stumpage, in the better grades and the poorer grades?

A. No, but there is a difference in the selling price on that market.

Q. That is what I am getting at. The values that you have put on there are stumpage values, stumpage per thousand? A. Yes, that is right.

Q. And in order to figure stumpage values for Douglas fir, you have to figure the value of the peelers, do you not? A. Yes, I did.

Q. So you cannot tell us what the total cost would have been delivered in Portland of these logs?

A. No.

Q. Either peelers or Douglas fir generally?

A. No. [1055]

Q. Or of any of the logs?

A. Not delivered in Portland.

Q. You were with the Government service for some little time, as I recall? A. Yes.

Q. Were you up in this particular district?

A. I was. The most of the time that I spent with the Service was spent on what is now the

(Testimony of Lyle A. Cummings.)

Gifford Pinchot National Forest, and it is about, oh, 20 miles almost due north of this area, maybe twenty-five.

Q. In connection with this particular cruise, did you have occasion to examine the Government cruises on this particular property?

A. No, I did not.

Q. Or to examine any area cruises?

A. No, I have not.

Q. You just went up there to find out how to get to this property?

A. That is all, yes. So far as I know, they do not have the cruises at Hood River, or, I mean, Parkdale. At least I was not shown them, and, of course, I didn't inquire. We do not look at other people's cruises until we have ours done if we are going to make any comparison at all.

Q. This cruise that was made by you was made at the request and expense of the Title and Trust Company? [1056]

A. Yes, through Mr. Buell. He employed us.

Q. Yes, for use in connection with this case?

A. So far as I know, yes, I am sure that is right.

Mr. Jaureguy: That is all.

The Court: Recess until one-thirty.

(Recess taken.) [1057]

Afternoon Session

February 4, 1953, 1:30 P.M., Trial Resumed

LYLE A. CUMMINGS

recalled, testified as follows:

Cross-Examination

By Mr. Krause:

Q. Mr. Cummings, in order to check back on these stumpage values here, we would have to have the sales price or the value of the logs at some point here, wouldn't we? A. Yes.

Q. At what point did you take the values of these logs for the purpose of this cruise?

A. The Columbia River.

Q. Where is the point?

A. It would be at, probably at Hood River.

Q. At Hood River?

A. Because that is the most, that is the nearest place.

Q. Well, was there a log market at Hood River that you could take, that is, the price on different logs and so on as a——

A. I used the values from the "Timberman" given for this month, for that month.

Q. They gave you the value for these different types of logs at Hood River?

A. In the Columbia River, which I used.

Now, it is my understanding that that price is used along the river, but there is certain towage charges that would be [1058] incurred to move them from Hood River to Portland.

(Testimony of Lyle A. Cummings.)

Q. Can you give us those figures now? Do you have them with you?

A. I do not have the report. Which figures was it that you were interested in?

Q. They are not in your report. Well, we would be interested in all of them because net stumpage values here do not mean a thing unless you know what you are selling the logs for; isn't that right?

A. That is right.

Q. If you sell them for ten dollars more, your stumpage prices are ten dollars low.

A. Now, in my case I have the "Timberman," from which I took the log selling prices quoted at that time.

Q. That is the "Timberman" for what month?

A. Let's see, September and October are the two that I used of 1951.

Q. Two issues of the "Timberman"?

A. Yes.

Q. September and October? A. Yes.

Q. 1951? A. Yes.

Q. There was a ceiling on logs at that time, wasn't there?

A. I do not know, but the quoted price is what I used. [1059]

The Court: What was No. 1 saw log, Douglas fir?

The Witness: I would have to get my case with the "Timberman" in it, but I could tell you that I do not have that. What I have here on this ap-

(Testimony of Lyle A. Cummings.)

proximately is the average log price based on the grades that I found in the weights.

The Court: Is there a formula that shows that if there is 20% No. 1 peelers, the price goes up 15%?

The Witness: Not to my knowledge.

The Court: In other words, the prices that you used indicate that there is no difference depending upon the amount of peeler logs in the stand?

The Witness: No, that is not quite true. You see, we decide, determine the amount of logs or grades. Then we use a weighted selling price by percentage, as Mr. Cooke explained.

Say you have 10% No. 1 peelers, and your peelers are selling for a hundred dollars. Well, 10% of your price for your average selling price would be at the hundred dollar rate. In other words, then, \$10 would be the portion that the No. 1 peelers would represent. If there was 30% No. 2 peelers, it would be 30% of the \$80 or \$90, whatever would be No. 2 peeler price, and that way you would arrive at an average selling price for a particular stand of timber. It would be different for all stands. No two would be identical.

The Court: What figure did you use for the falling and bucking? [1060]

The Witness: \$4.25 a thousand.

The Court: How much for yarding?

The Witness: \$5.60 yarding and loading, I have it.

The Court: How much down to the boom at Hood River for hauling?

(Testimony of Lyle A. Cummings.)

The Witness: \$5.66 a thousand.

The Court: So you had at that time—what other costs did you put in there?

The Witness: I had slash disposal, \$2.00; depreciation and other costs, \$3.00 a thousand. That gave me a total logging cost of \$29.50.

The Court: \$29.50?

The Witness: Yes.

The Court: You had \$4.25, \$5.60, \$5.66, \$2.00, and \$3.00?

The Witness: I have a development cost of \$8.99.

The Court: Is that for a logging road?

The Witness: That is for a logging road, yes, construction and so forth, culverts or bridge, whatever is necessary.

The Court: All right, Mr. Krause, go ahead.

Q. (By Mr. Krause): That \$8.99 a thousand would be against every thousand feet that you took off of the full 65 acres?

A. Yes, that is right.

Q. These prices are on the basis of logging the entire tract off at once?

A. Yes. [1061]

Q. The two parcels?

A. That is right.

Q. In your segregation of the merchantable from the cull, you also determined the stumpage price on the cull, I suppose?

A. No.

Q. That you threw out?

A. Yes.

Q. Well, this 1,800,000 of cull, that was not regarded as having any value up there?

A. No.

(Testimony of Lyle A. Cummings.)

Q. Would you fall and buck it in the first place, even though you were not going to use it?

A. No, you probably would not, and the thought is that if you did fall and buck that you probably would not any more than recover your costs on your material because we use as a guideline there for cull 50%. If it is 50% rotten, then we cull it out entirely. It is pretty much standard practice in cruising.

Q. Well, then certainly your development costs for \$8.99 per thousand would not have been applicable to this cull? A. No.

Q. That would only be applicable to the merchantable timber? A. That is right.

The Court: In other words, if 50% of the tree or more is cull, then you do not count the tree at all?

The Witness: That is right, we throw it out. We make a [1062] gross estimate as we did here to give a person interested an idea of how much cull material there is involved.

Mr. Krause: I have nothing further.

Redirect Examination

By Mr. Buell:

Q. Mr. Cummings, we have been referring to the entire tract; however, in your cruise of the southern part of the 25-acre tract, I believe you only came out with a very—\$1,800 in value, did you not?

A. Yes.

Q. Now, in determining the values, or rather, in determining the costs of logging and developing the

(Testimony of Lyle A. Cummings.)

tract for the purpose of logging the 40 acres and the north half of the 25-acre tract, would the question of whether or not the timber on the southern half of the 25-acre tract were available make any appreciable difference in the cost?

A. No, very little. The volume there is so small that it would influence it very little.

Q. There has been quite a bit of discussion of this question of arriving at a price on the basis of logging costs and the market value of logs in the river. However, is that the only basis upon which you arrived at your opinion as to the value of the timber on this property?

A. No, in making a valuation, it is customary to check other sales of similar timber in the immediate area, which we have [1063] done, and it is a part of the—one of the exhibits I have here. Our firm keeps a record of sales that take place in this region in particular and some other regions, too, of the amount that is sold and who the buyer is, who the seller is, and so forth, the material of which is reported on these cards so we weigh that in making any valuation.

The Court: Have you ever compared your figures to those of the Forest Service or Bureau of Land Management on various tracts?

The Witness: No, I have not.

The Court: You do not know how your valuation compares with theirs, as to whether it is higher or lower?

The Witness: Well, of course, since I was in

(Testimony of Lyle A. Cummings.)

the Forest Service for several years, I am inclined to follow along those lines, you see, but we do not make a direct comparison.

Usually, when we make a valuation for somebody, well, that is it, and we have made quite an investigation when we make that so we do not compare it with other agencies.

The Court: Do you use the same formula now that you used when you were in the Forest Service?

The Witness: Very similar.

The Court: Have you watched the prices and the paid price and the appraisal price of Forest Service lands in the last year or two?

The Witness: Yes, I have. [1064]

The Court: Isn't it a fact that that sold from two to three times more than the appraisal?

The Witness: Yes.

Q. (By Mr. Buell): Mr. Cummings, one other question here regarding the age of this stand of timber. This is all old-growth timber on the property; is it not? A. Yes, it is.

Q. Could you express any opinion as to the percentage of growth over a 6-year period of that stand of timber? In other words, as to what the growth would be from, say, 1944 to 1950?

A. No, I do not believe I could.

Q. Well, timber of that age, does it increase much in volume per year?

A. Ordinarily, no. That is a very old stand.

Q. During what years of growth of timber does the greatest increase of volume occur?

(Testimony of Lyle A. Cummings.)

A. On a good site, timber increases very rapidly in volume up until about 90 years. That is Douglas fir I am speaking of. A young stand of Douglas fir, up until about 90 or 100 years, grows quite rapidly, and at that point, then your growth tapers off until you do not receive sufficient revenue from that timber to let it stand, but as a guide-line, it is better to harvest young timber at that age. That is, you have gotten a maximum production per year, and on the older timber the growth is very small. [1065]

Q. Does a defect in a particular stand of timber begin increasing generally at any particular point of the age, with reference to the age of timber?

A. Well, only this way, I believe I could answer that, is that a very old stand would have, would be more subject to defect, and the defect would be present in greater amounts in a very old stand than it would in a younger, more thrifty stand.

That is about the only way I could answer that question.

Q. The timber involved in this property here is at a fairly high altitude, is it not?

A. Yes, I would not say what the altitude is without checking. It is a higher elevation type.

Q. Is not the fact that it is located where it is, isn't there a lesser amount of growth per year at an elevation such as that at Lost Lake than at a lower elevation?

A. Well, the site would have a big bearing on

(Testimony of Lyle A. Cummings.)

it, and I couldn't—I don't believe I could answer that question.

Q. With reference to the defects that you mentioned and which you stated were limited mostly to the hemlock timber on the property; is that correct?

A. Yes, that was the most defective.

Q. Then, is that defect something that you could observe in a casual wandering through the woods, or do you have to actually go up to the tree and look at the tree carefully in order to determine whether or not the tree is, as you say, 50% or more [1066] cull?

A. There are certain things you can observe just walking through the woods. You can see the tops broken out of a large number of trees and you can see these big shelf-like conks on quite a number of the trees, but in order to make an estimate of the defect, it is actually necessary to walk around the tree and look at it because there are other things involved. A check alongside a tree many times indicates that rot has gone in on a seam, and there are checks and cracks on a piece of some hemlock which indicate that they are rotten inside.

The Court. You say that there was quite a bit of infestation among the hemlock?

The Witness: Yes.

The Court: What was the rate of infestation in the Douglas fir?

The Witness: Not nearly as much as in the hemlock. It is resistant to the rot a great deal.

The Court: The infestation of hemlock in that

(Testimony of Lyle A. Cummings.)

area does not make very much difference, does it, because of the low value of the stumpage? You only gave it a value of \$1.00 to \$4.00, didn't you, on some of these stands? For instance, on the Government Lot 40, Table II, you only gave the hemlock and Noble fir, you only gave a value of \$1.00, so even if the whole thing was infested, it would not amount to more than \$785, would it? [1067]

The Witness: Well, you see, you have already reduced those values by all these other factors of logging costs and so forth. It has paid its way out as far as that is concerned. Then there is the profit and all these other things have already been counted.

The Court: Now, loggers use trees that are 50% cull, do they not?

The Witness: Yes, sometimes.

The Court: And that is their additional profit?

The Witness: Well, yes, if there is additional profit. Sometimes you will fall a tree that is a cull, and you won't get anything out of it. The next time you fall one you might get a thousand feet from it. You see, when you are dealing in cull trees you are fortunate if those trees will pay their own way, if they will pay the expenses that will be charged against them before they get to market.

The Court: If a tree is 55% good, you give it a value; if it is 45% good, you do not give it any value?

The Witness: That is right.

The Court: Various cruisers may differ as to whether a tree is 50% good or not?

(Testimony of Lyle A. Cummings.)

The Witness: Oh, yes.

The Court: And a difference of 15% to 20% is not unusual among cruisers?

The Witness: Well, in the more defective stands I think [1068] that would be true. In the better, thriftier stands, I don't think there should be that difference.

The Court: Any further questions?

Q. (By Mr. Buell): One further question, Mr. Cummings. With regard to the percentage of defect, if you find a particular tree is, as the Court indicated, say 55% or 60% merchantable and 40% was defective, in calculating your total footage, do you calculate just 60% of the tree or do you consider the whole tree as merchantable insofar as totalling your gross volume of timber?

A. No, our volumes indicate net volumes. In other words, if a tree was 40% defective, we would give that tree only 60% of its gross volume.

Q. Then could you give us your opinion, Mr. Cummings, as to the reasonable value of the timber on that entire tract as of September, 1951?

The Court: I think he has already testified to that, \$45,172.

Mr. Buel: I think that the question there didn't include the term "market." I thought it was covered, but I wanted to make sure of it.

The Court: Is that correct?

The Witness: That is correct, yes.

The Court: Any further questions?

Mr. Buell: I have no others. [1069]

(Testimony of Lyle A. Cummings.)

Mr. Ryan: None.

Mr. Krause: None.

Mr. Jaureguy: No.

The Court: That is all.

(Witness excused.)

Mr. Buell: May it please the Court, we intend to offer also Exhibit Number 20, which was the, contains the notes of Mr. Cummings.

The Court: It may be admitted.

(Envelope, containing correspondence and timber sale record cards, previously marked Plaintiff's Exhibit 20 for identification, was received in evidence.) [1070]

THOMAS GUNNESS

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Gunness, you are employed by the First National Bank of McMinnville, are you not?

A. I am.

Q. Were you employed there in 1951?

A. Yes, sir.

Q. What is your position there?

A. Assistant Cashier.

Q. Can you talk a little louder?

A. Assistant cashier at the present time.

(Testimony of Thomas Gunness.)

Q. Now, during 1951, we understood here that Chet and Lois Parker had an account there, or had two accounts there, one in their names of Chet or Lois Parker, and another in the name of Phillips Construction Company; is that correct?

A. Yes, I don't know. I don't recall just offhand when Phillips Construction Company was opened.

Q. Did Walter Stegmann have an account at the bank during 1951?

A. I am certain he did not.

Q. Do you know how long it had been since he had had an account there?

A. As I recall, as I know, he didn't ever have an account [1071] there, so far as I know.

Q. Mr. Gunness, how do you pronounce it?

A. Gunness.

Q. Gunness, and Mr. Gunness, this is your first day here at the trial, is it? A. Yes, it is.

Q. There has been testimony here, Mr. Gunness, about an arrangement made between the Parkers and Mr. Stegmann early in the month of May, 1951, whereby Mr. Stegmann was to be permitted to write checks, and Mr. Parker would notify your bank, and you would honor those checks and charge them to Mr. Parker's account.

Now, are you familiar with what that arrangement was?

A. Well, as I know, the Parkers talked to the President of the bank about it.

Q. I beg your pardon?

(Testimony of Thomas Gunness.)

A. The President—the Parkers talked to the President of the bank about it.

Q. You do not know what that arrangement was?

A. I don't just know the arrangement, no.

Q. Well, did you know that there was some such arrangement as that? A. Yes.

Q. I will ask the bailiff to hand you an exhibit which consists of three checks and a note, photo-static copy of a note, [1072] signed by you, Mr. Gunness, dated May 21, 1951, which is Exhibits 39-A, B, C and D. Will you look at this and state, if you can whether that is a note that you wrote to Mr. Parker enclosing the three checks?

A. That is the note. Now, those must be the checks, too, but I can't say for certain.

Q. Well, do you recall the occasion of mailing those checks to Mr. Parker along with that note?

A. Yes.

Q. Did you handle the clearing of any of those three checks?

A. Did I handle the clearing of any of them?

Q. Yes.

A. Well, when they came into the bank, they were charged to the account. Now, I don't recall just how they were handled. We no doubt charged the account with a memorandum check. Now, I can't say for certain.

Q. Let me ask you this. Did you ever personally handle any of these checks that were written by Mr. Stegmann and charged to Mr. Parker's account?

(Testimony of Thomas Gunness.)

A. Well, I must have if I mailed them to Mr. Parker.

Q. Can you tell me how the system worked? What was the machinery for cashing those checks?

A. Well, these would come into the bank in the regular, in a cash letter. They are all from Newberg, and we would—when these came in we would take these out and put in a memorandum [1073] check charging Mr. Parker's account.

Now, I imagine that is the way we did it. I can't just recall, though.

Q. Did you have any instructions from Mr. or Mrs. Parker on these particular checks that you should pay them?

A. Well, now, I didn't myself. Probably the president did. He must have told me to handle these—I can't—

Q. You have no recollection, then, of any conversation with the Parkers about that arrangement at all? A. No, I can't myself, no.

Q. I will ask the bailiff to hand you another exhibit, 38-A and 38-B, which are two more checks written by Mr. Stegmann in the month of August of 1951, and I understand also charged to Mr. Parker's account. Did you handle either of those transactions?

A. Not that I recall, no.

Q. You don't recall any conversation with the Parkers regarding those? A. No, I can't.

Q. Did you have anything to do with a transaction occurring on August 12th—no, August—did you

(Testimony of Thomas Gunness.)

have anything to do with a transaction on or about September 9, 1951, at which time the Parkers obtained from your bank a cashier's check for \$95,000?

A. Did I have anything to do with it? [1074]

Q. Yes. A. No, I did not.

Q. You have no knowledge about that transaction? A. No.

Q. I will ask the bailiff to hand you Exhibit 319, which is a copy of the letter from the bank at Hood River to your bank, dated, I believe—what is the date of that letter? A. August 10 is the date.

Q. Did that letter, by any chance, come to your attention, Mr. Gunness?

A. No, I have never seen this letter before.

Q. Did you ever talk with anybody about Mr. Stegmann's financial responsibility?

A. No, it would not be in my department. I am a teller at the bank.

Mr. Strayer: I believe that is all, Mr. Gunness.

Mr. Jaureguy: No questions.

Mr. Krause: None.

Mr. Ryan: No questions.

The Court: That is all. You are excused.

(Witness excused.)

Mr. Strayer: I would like to ask Mr. Gunness to remain in the court room until Mr. Wortman has been on the stand, your Honor. I am not sure just who knows about what here. [1075]

JOHN WORTMAN

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Wortman, what position do you hold with the bank at McMinnville, First National Bank at McMinnville? A. Assistant Cashier.

Q. Were you acting in that capacity in 1951?

A. Yes.

Q. And are you the gentleman that Mr. Gunness referred to as having had this arrangement with the Parkers? A. No.

Q. Well, who was?

The Court: He said it was the president of the bank.

Mr. Jaureguy: This is his nephew.

Mr. Strayer: Well, do we have the wrong Wortman?

The Witness: Well, I don't know. You had subpoenaed Mr. Frank Wortman. However, he was not subpoenaed the second time when we were notified.

Mr. Strayer: He was not subpoenaed what?

The Witness: He was not subpoenaed the second time when Tom and I were notified, the second time, the second subpoena.

Mr. Strayer: Yes, I understand Mr. Frank Wortman was not subpoenaed when it was understood that you were the man who had [1076] all the

(Testimony of John Wortman.)

knowledge regarding this transaction; isn't that right?

The Witness: Well, what particular transaction?

Mr. Strayer: I am asking you about this arrangement between the Parkers and the bank whereby Mr. Stegmann could write checks and the Parkers would notify the bank to honor the checks.

The Witness: It must have been a misunderstanding somewhere because that wasn't—it wasn't me.

Q. (By Mr. Strayer): You had no such arrangement with the Parkers?

A. Not directly with them, no.

Q. Who did you have the arrangement with?

A. Had there been any arrangements whereby we had had an arrangement with them, it would have been Mr. Frank Wortman.

Q. Did you know anything about the arrangement?

A. I knew that we had paid some checks drawn by Mr. Stegmann against the Parker account and that we had had an authorization from Parkers at the time. Now, whether that was verbal between Mr. Frank Wortman and the Parkers or whether it was in writing, I could not say.

Q. (By Mr. Strayer): Will you hand the witness 38-A and B, 39-A, B, C and D, Mr. Bailiff?

Will you examine those, Mr. Wortman, and tell me whether you handled any of those transactions for the bank?

A. The only way they would have been handled,

(Testimony of John Wortman.)

these two, would [1077] have been to come through the bank in the regular course of business and charged to Stegmann's account.

Q. Did Stegmann have an account?

A. No, I mean charged to Parker's account, and then the bank return them in the regular bank statement.

Q. Well, you are referring now to the two checks made payable to Ethel Winans? A. Yes.

Q. Did you have any contact with them, anything to do with charging those to the Parker account?

A. No, that would have been just—that would have gone through the regular banking business. Whoever had an authorization would have notified the bookkeeper for this particular book to post the checks to that account.

Q. Well, would there have been any authorization from Mr. or Mrs. Parker as to those particular checks, or are you speaking of a general authorization?

A. Well, there would be probably—there probably was a specific authorization on each check. Whether it was in writing or whether it was verbal, I don't know.

Q. How about the other checks?

A. Well, without looking at our files, I couldn't say on those.

Q. Do you have any information with you from which you can determine how those transactions were handled? [1078]

(Testimony of John Wortman.)

A. No, but from all appearances of the pictures, they were handled the same way as the other two. Now, of course, I am not certain of that. I would have to look at our records to be certain of that.

Q. Do you have some records from which you can determine that?

A. No, I would have to, I would have to look at the photostats of these particular checks.

Q. Well, that is what you have there, isn't it?

A. Well, now, this is the particular check. These were all in May.

The Court: Mr. Strayer, what is it you want to find out? Maybe you can stipulate.

Mr. Strayer: Maybe we can wait until I read this letter Mr. Jaureguy just gave me.

(Thereupon, there was a discussion off the record.)

Mr. Strayer: May we have this marked as an exhibit, your Honor? Do we have an open number?

(Document, letter from the First National Bank of McMinnville, dated January 10, 1953, to Cake, Jaureguy & Hardy, from Frank Wortman, marked Plaintiff's Exhibit 78 for identification.)

The Court: Are you offering that in evidence?

Mr. Strayer: Yes.

Mr. Jaureguy: It is a letter from the president of the [1079] First National Bank to me saying, among other things, that if someone can furnish

(Testimony of John Wortman.)

them with some information about these checks, they will be glad to check them up for them. That is a very brief resume of it. It has other things in it that have not been discussed today.

The Court: Is there any objection to that?

Mr. Strayer: I can go ahead while they are looking at it, your Honor.

Mr. Jaureguy: I would like to have the record show, if I may, Mr. Strayer, that that letter was written in answer to a letter that I wrote to the bank, and I wrote a letter to the bank at the request of Mr. Buell, merely aiding them in getting exhibits and things, is that right, Jim?

Mr. Buell: Yes.

Mr. Strayer: I would like to offer at this time, your Honor, Exhibit 55, which I understand was a series of safe deposit box cards, and Exhibit 79, which I understand to be a compilation of bank statements for the year 1951 of the Chet and Lois Parker account and the Phillips Construction Company account.

The Court: Any objection?

Mr. Jaureguy: No objection.

The Court: Any objection to the safety deposit slips recorded?

Mr. Jaureguy: None. [1080]

The Court: The last two may be admitted.

(Document, letter from The First National Bank of McMinnville, dated February 4, 1953, to Nicholas Jaureguy, from J. Wortman, previ-

(Testimony of John Wortman.)

ously marked Defendant's Exhibit 55 for identification, was received in evidence.)

(Document previously marked Plaintiff's Exhibit 78 for identification was received in evidence.)

(Letter of January 30, 1953, from The First National Bank of McMinnville to Phillips, Coughlin, Buell & Phillips, containing photostatic copies of bank statements, was marked Plaintiff's Exhibit 79 for identification.)

The Court: Any objection to 79?

Mr. Jaureguy: No.

Mr. Krause: No.

Mr. Ryan: No.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit 79 for identification was received in evidence.)

Q. (By Mr. Strayer): Mr. Wortman, the testimony here indicates that on Sunday, September 9, 1951, Mr. or Mrs. Parker obtained [1081] from your bank a cashier's check of \$95,000. Did you handle that transaction?

A. There was a draft drawn on The First National Bank of Portland.

Q. What was?

A. Instead of—rather than a cashier's check, it was a draft.

Q. It was a draft rather than a cashier's check.

(Testimony of John Wortman.)

Did you handle that transaction? A. Yes.

Q. Will you just tell us what occurred?

A. Mrs. Parker called at my home and said that she would like to buy a \$95,000 cashier's check or draft, so I went to the bank and wrote one out for her.

Q. What did she give you in payment for it?

A. A check.

Q. Just a personal check? A. Yes.

Q. Can you explain why it was that the two checks to Ethel Winans and the \$95,000 check which she gave you on that day were charged to the Phillips Construction Company account?

A. Two checks? What did you say about two checks?

Mr. Strayer: Will you hand the witness this exhibit again?

Q. I believe, Mr. Wortman, that the two checks which you have in your hand, 38-A and 38-B, are represented by the \$1,000 and the \$4,000 items on the bank statement for the month of August, [1082] 1951, of the Phillips Construction Company, and that the \$95,000 item in September of 1951 is the cashier's check which was charged Phillips Construction Company. That is, a draft. Now, how does it happen that those three checks, the two checks and the draft, were charged Phillips Construction Company account? Do you have any recollection of that?

A. How does it come they were charged to that account?

Q. Yes, as I understand it, you had two accounts

(Testimony of John Wortman.)

there, one Phillips Construction Company, and one Chet or Lois Parker.

Now, were you told to charge it in the manner that it was charged in any of these three items?

A. I can't recall offhand whether we were or not; however, the Phillips Construction Company—of course, Chet and Lois Parker were the Phillips Construction Company. That was their account.

Q. You do not remember Mrs. Parker making any request as to the manner in which any of these checks were to be charged? A. No.

Q. Well, now, how long had it been since the Phillips Construction Company account was active before August 9, 1951?

A. I could tell you exactly by the bank statement. Well, it was opened on August 9, 1951. (Consulting document.)

Q. Was that the first time that you had had such an account there? A. Yes. [1083]

Q. That was opened, wasn't it, by a transfer of \$100,000 from the Chet and Lois Parker account to the Phillips Construction Company account?

A. That is correct.

The Court: When was that account closed?

The Witness: What account?

The Court: The Phillips Construction Company, or is it still active?

The Witness: It is still active.

Q. (By Mr. Strayer): Well, Mr. Wortman, I will ask the bailiff to hand you Exhibit 314, which is a request for information regarding Mr. Steg-

(Testimony of John Wortman.)

mann, coming from your bank at Hood River. Do you know anything about that request, or did you do anything in regard to it?

A. No, I did not have anything to do with it.

Q. You would not know who it would have been from your bank that called the Hood River bank?

A. It was undoubtedly the president, Mr. Frank Wortman.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. I noticed, Mr. Wortman, on the date that the \$95,000 check was given for the bank draft, that there was sufficient—there were sufficient funds in the Phillips Construction Company account to pay it, but not sufficient funds in the Chet or Lois [1084] Parker account. Could that have been the reason that it was charged to the Phillips Construction Company? A. Well, not necessarily, no.

Q. Wasn't this a case where, if the Chet and Lois Parker account did not have sufficient funds, you automatically charged it to the Phillips Construction Company account?

A. Well, anything of that amount—as nothing was said in regard to the check at the time Mrs. Parker gave it to me, it is possible that she neglected herself to put Phillips Construction Company account on it. However, any checks drawn by either

(Testimony of John Wortman.)

Chet or Lois Parker were automatically charged to the Phillips Construction Company.

Q. If their other account did not have sufficient, you mean?

A. What was the length of time there that the two accounts were open?

Q. Well, I don't know when the Chet and Lois Parker account was opened. The Phillips Construction Company account was evidently opened on August 9th. This \$95,000 check was September 10th, but I notice that none of the checks that were charged to the Phillips Construction Company during the months of August and September were signed in the name of Phillips Construction Company as drawer, but were signed simply by Chet Parker or Lois Parker.

Mr. Strayer: Or Stegmann.

Mr. Jaureguy: Or Stegmann, yes. [1085]

The Witness: Well——

Q. (By Mr. Jaureguy): So was it a matter of consequence, did you regard it then as a matter of consequence whether these checks were charged to one of their accounts or the other one?

A. I assume so, yes.

Q. What would the difference be if you charged them, if you charged against the Phillips Construction Company, signed by Chet Parker or by Lois Parker and others, signed exactly the same to their personal account, that is, to the account which was in their own names rather than Phillips Construction

(Testimony of John Wortman.)

Company? What difference did it make to you which one you charged it to?

A. Well, I don't know. It is, as you say, if some checks were larger than the balance in their personal account, or we could have been notified by them to charge the checks to that account.

Q. You could have been, but you are not saying that you were? A. No.

Mr. Jaureguy: That is all. Thank you very much.

Mr. Ryan: No questions.

The Court: Any questions?

Mr. Krause: No questions.

Mr. Strayer: Mr. Buell just called to my attention the fact that the safety deposit withdrawal slips do not cover the 1950 withdrawals. I think it was our understanding to have both [1086] 1950 and 1951.

Mr. Jaureguy: Well, I can't remember, of course, the understanding. If it is of consequence, I will look up my letter that I wrote him.

Mr. Strayer: I think it is of no consequence if we can get the 1950 withdrawal slips.

The Court: Withdrawal slips?

Mr. Strayer: Withdrawals from the safety deposit box, entries in the safety deposit box, I should say.

The Court: What would the relevancy of that be?

Mr. Strayer: Well, it bears directly, your Honor, upon the relevancy of the testimony of both Mr.

(Testimony of John Wortman.)

and Mrs. Parker relative to cash transactions of Stegmann.

The Court: I thought it was the early part of 1951?

Mr. Strayer: Well, the \$22,000 note was in November, 1950.

The Court: Where was that safety deposit box located?

Mr. Strayer: First National Bank of McMinnville, your Honor.

The Court: Do you have them coming, Mr. Jaureguy?

Mr. Jaureguy: Oh, no, your Honor, I haven't anything. I gave them everything I had.

The Court: Do you want me to ask Mr. Wortman and the other man to furnish——

Mr. Strayer: That is what I had in mind.

The Court: All right. Mr. Wortman, come back here. [1087]

(Witness resumes witness stand.)

The Court: Do you want Mr. Wortman back here? Is there any need for him to come back?

Mr. Strayer: I think all that is necessary is for your Honor to direct him to produce.

The Court: Yes, but do you want him to come back?

Mr. Strayer: Not as far as I am concerned.

The Court: Mr. Wortman, apparently Mr. and Mrs. Chet L. Parker had a safety deposit box.

Mr. Strayer: Two boxes.

(Testimony of John Wortman.)

The Court: Two boxes at the First National Bank of McMinnville.

There has been produced in Court the record of the times that Mr. and Mrs. Parker had access to the box during the year 1951. We understand that you have such a record for 1950; is that true?

The Witness: Should have, yes.

The Court: Are you going back to the bank today?

The Witness: Yes.

The Court: Will you send to Mr. Jaureguy, because he is the attorney for Mr. and Mrs. Parker, a list of the times that that box was opened by either Mr. or Mrs. Parker during the year 1950? During the whole year, or is the last six months sufficient?

Mr. Strayer: I think the last six months is sufficient, [1088] your Honor.

The Court: From July 1, 1950, to December 31, 1950.

Mr. Strayer: I think we might like—we want all entries. I am not sure whether anyone else has access to the box or not.

The Court: If someone else had access to the box and they opened the box, we would like to have that information also.

Just deliver to Mr. Jaureguy. You get a card from Mr. Jaureguy and send it to him. If you do that today, he will receive it tomorrow. Both of you, you and Mr. Gunness, are excused from further attendance at the trial. The only thing you are supposed to do is send Mr. Jaureguy that letter.

(Testimony of John Workman.)

Mr. Jaureguy: I may say that it took them a long time to get the others. It may be they won't get them here by tomorrow.

The Court: Get them here as soon as they can.

(Witness excused.) [1089]

WALTER BROWN

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Brown, where is your home?

A. What?

Q. Where is your home?

A. Sheridan, Oregon.

Q. Are you acquainted with Walter Stegmann?

A. Yes, I am.

Q. Did you have a contract with him, or some kind of a working arrangement with him, on a logging of a Gopher Valley job back in 1949 and 1950?

A. I did in 1949.

Q. How long did you work for Mr. Stegmann?

A. Oh, I imagine around a month, a little over.

Q. Were you paid for your services?

A. What?

Q. Were you paid for your services?

A. Yes.

Q. That was a logging operation that Mr. Stegmann had out in Gopher Valley, Mr. Brown?

(Testimony of Walter Brown.)

A. That is right.

Q. Did you have some kind of a contract with him to do logging [1090] for him? A. I did.

Q. Didn't you have some kind of a claim against him arising out of that operation, a wage claim?

A. No wage claim. The cat work; no wage claim.

Q. What kind of a claim was it?

A. Caterpillar work.

Q. Oh, for Caterpillar work. For how much was your claim?

A. I don't remember now. It has been too long ago.

Q. Well, approximately?

A. I would not attempt a guess.

Q. Were you paid your money?

A. I was not paid all of it, no.

Q. Did you make any effort to claim that money that was due you? A. I did.

Q. Have you ever been able to collect it?

A. No.

Q. What effort did you make to try and claim it, Mr. Brown?

A. Oh, I sent him a statement, went to talk to a lawyer, and the lawyer told me he didn't have nothing; it was no use trying. All I could get was a judgment.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all. *Res inter alios acta*, so I won't question it. [1091]

Mr. Ryan: We cannot see the relevancy of it either. We have no questions.

(Testimony of Walter Brown.)

The Court: Any cross-examination?

Mr. Krause: No, we have no cross-examination.

(Witness excused.) [1092]

MILLARD ELLIS

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your Honor, may I have Exhibit 76, please?
Mr. Ellis, where is your home? A. Willamina.

Q. In 1949 and 1950, were you connected with the Willamina Garage? A. Yes, sir.

Q. In that connection did you have some business with Walter Stegmann? A. Yes.

Q. What did that business consist of?

A. Oh, general garage work, gas and oil, what-not, parts and labor.

Q. Was there an occasion there, Mr. Ellis, where you were attempting to collect a bill of some three or four thousand dollars from Mr. Stegmann?

A. Yes.

Q. What was the amount; do you remember?

A. \$3,829.02.

Q. About what time was that?

A. That was all made mostly in 1949. [1093]

Mr. Ryan: What was that, please?

The Witness: Made in 1949, the biggest part of it, all of it, I am not sure.

(Testimony of Millard Ellis.)

Q. (By Mr. Strayer): What steps did you take to try to force collection of your bill?

A. Well, I did hold a truck for a while.

Q. You had a truck that you had been doing some work on, did you?

A. Well, I done work on all of his trucks.

Q. What was the truck that you held? Was that a truck that you had been working on?

A. Well, not a lot of work, but I had done some work on it, gas and oil and repairs.

Q. Was there a trailer that you also held?

A. There was a trailer on the truck.

Q. This was along in 1950 sometime, was it?

Mr. Ryan: 1949.

The Witness: I think I took that truck in about November of 1949.

Q. (By Mr. Strayer): How long did you hold it?

A. I am not sure of that. I think until about September, 1951.

Q. Did you have any contact with either Mr. or Mrs. Parker regarding the truck?

A. Mrs. Parker.

Q. Did she come to see you? [1094]

A. Yes.

Q. Can you give us the approximate time when that happened?

A. Well, I am not sure. I think it would have been probably in March or April, right starting the logging in the spring.

Q. March or April, 1950. That would be in 1950?

A. Yes, 1950.

(Testimony of Millard Ellis.)

Q. What was your conversation with her?

A. Well, she come wanting to know how much I had against the truck and I told her, well, it would not go out without the whole bill, four thousand. Of course, I had an interest in it that would run over four thousand, is what I was talking about, run over four thousand.

Q. Was that all the conversation with her?

A. Well, mostly, yes.

Q. Had you made investigation to determine who the owner of the truck was? A. Yes.

Q. Who did you understand the owner to be?

A. I took it up with Salem on the title, and the title was in Walt Stegmann.

Q. All right. Now, what next happened on that transaction?

A. Well, the next thing I knew, why, I got a subpoena or something in court to show cause why I would not turn the truck over to Parker.

Q. I will hand you an Exhibit, 76, Mr. Ellis. Does that appear [1095] to be a copy of a complaint that was served upon you? A. Yes, that is it.

Q. Referring to the complaint, I notice that the complaint is one filed by Chet Parker against you in which he seeks recovery of a White truck and a Walker trailer, and this complaint alleges: "That on or about the 24th day of July, 1950, and before the commencement of this action, the plaintiff duly demanded said personal property from the defend-

(Testimony of Millard Ellis.)

ant, but the defendant refused and still refuses possession thereof to the plaintiff.”

Now, could it have been about the 24th of July that you talked to Mrs. Parker?

A. Well, it could have been, but I figured, I thought it was maybe probably earlier in the spring than that. I really forget. I figured it would be close to the spring logging opening up because I remember talking about she had a lot of logs to cut.

Mr. Strayer: I am not sure whether 76 is in, your Honor. If not, I offer it at this time.

Mr. Jaureguy: We object to it as incompetent, irrelevant and immaterial. We do not want to have to try that lawsuit all over again unless we have to.

Mr. Ryan: I object to it on the same grounds, your Honor.

Mr. Lindsay: It has been admitted.

The Court: It has been admitted already. I do not have [1096] to pass on it.

(Document, letter from Earl T. Newbry, Secretary of State, January 21, 1953, to Griffith. Phillips & Coughlin, marked Plaintiff's Exhibit 80 for identification.)

Mr. Strayer: I also wish to offer in evidence at this time a certificate from the Secretary of State dated January 21, 1953, which traces through the title and the transfers on this particular truck.

The Court: Any objection?

Mr. Ryan: May we see it?

Mr. Strayer: Now, I notice that according to

(Testimony of Millard Ellis.)

the certificate of the Secretary of State, the title was transferred to Chet L. Parker. It was applied for on July 22nd. "On July 22, 1950, the above title was received in this office endorsed for transfer to Chet L. Parker, Box 46, Route 1, McMinnville, Oregon, showing him to be both registered and legal owner.

"On July 25, 1950, the title was transferred and reissued in the name of Chet L. Parker."

Q. Now, I want to ask you, Mr. Ellis, whether you, after this replevin suit was filed seeking recovery of this truck and trailer, did you then check to find out whether Mr. Parker had become owner of the truck and trailer?

A. I did not know nothing about it until they served papers on me. [1097]

Q. Did you do anything about the lawsuit?

A. Well, I just got a lawyer, but he says I would have to turn it over to them, couldn't find nothing.

Q. So you turned over the truck and trailer to Mr. Parker. Have you ever been able to collect your bill from Mr. Stegmann? A. No, sir.

Q. Have you made efforts to do so?

A. Well, yes, they all tell me that was——

The Court: I didn't hear that.

The Witness: I say they all don't want to take the case. I talked to a lawyer and the Credit Bureau, but they said there was no use trying.

Mr. Strayer: That is all, your Honor.

(Testimony of Millard Ellis.)

Cross-Examination

By Mr. Jaureguy:

Q. I don't know as I have got the facts straightened up to ask you any questions or not. I think both Stegmann and Parker did a lot of business with the Willamina Lumber Company, didn't they?

A. Willamina Lumber Company.

Q. Were you connected with the Willamina Lumber Company? A. Willamina Garage.

Q. Oh, the Willamina Garage. You don't know anything about the Willamina Lumber Company, then? A. No. [1098]

Q. Stegmann had a lot of work done by you besides this? A. Yes.

Q. This work, you say, was done in 1949?

A. Most of that bill was made in 1949.

Q. Which bill is that, the one you are talking about? A. \$3,829.

Q. We do not have copies of the bill here, do we, as far as you know?

A. No, not as far as I know.

Q. You never did own this truck, did you?

A. No, sir.

Q. What was your—were you claiming the right to hang on to it? A. Well, no, not exactly.

Q. Why did you hang on to it then?

A. Well, it was brought in my garage for grease. I just kept it because he owed me a bill.

(Testimony of Millard Ellis.)

Q. Then later on—where is that lawsuit—is this it?

Mr. Strayer: No.

(Discussion off the record.)

Q. (By Mr. Jaureguy): Then in July, 1950, this case was filed against you by Chet Parker, and Francis Marsh was his attorney; that is correct, isn't it? A. I don't know the date.

Q. Well, it is subscribed and sworn to by Chet Parker the 20th [1099] day of July, 1950. It was filed August 23, 1950.

A. I don't think it was served on me until September. I am not sure of that. I was in the hospital.

Q. Did you know about it when it was signed?

A. Well, there is—no, I did not.

Q. You did not know about it until it was served on you? A. That is right.

Q. Then you made no appearance in the case?

A. Sir?

Q. Your lawyer told you that you didn't have a right to keep the truck? A. That is right.

Q. That is why you did not try to defend it?

A. That is right.

Q. How long have you known Chet Parker?

A. Chet Parker? Oh, I suppose for probably since 1944, 1945.

Q. Has he had work done in your garage before?

A. I don't believe so. I am not sure although it

(Testimony of Millard Ellis.)

could have been some little thing, but not as I know of.

Mr. Jaureguy: That is all.

Mr. Ryan: May I have an opportunity to look at this, your Honor?

The Court: All right. Mr. Krause?

Mr. Krause: I have not anything. [1100]

Cross-Examination

By Mr. Ryan:

Q. After you took this truck and trailer that you described here, you kept it down at the garage, I assume? A. Yes.

Q. After you did that, isn't it true that Mr. Stegmann asked you if he could sell the truck and trailer and realize on it and satisfy the indebtedness he had to you? A. No.

Q. Was there any dispute about the amount?

A. No.

Q. Isn't it true that there was some dispute about some of the people that had been signing for gas down at your place in the name of Walter Stegmann? A. No.

Q. Did you ever consult the First National Bank at McMinnville about this truck? A. No.

Q. Do you know whether Otto Heider had any interest in this truck?

A. Not until papers were served on me.

Q. Then you did know it?

A. That is the only time.

(Testimony of Millard Ellis.)

The Court: Any further questions?

Mr. Ryan: I just want to take a look. [1101]

The Court: Go ahead.

Mr. Ryan: You have never attempted any legal action for the recovery of this money?

A. Oh, only just to turn it over to the credit bureau or ask a lawyer about it. They told me it was too late.

Q. But at the time you took that truck you did not have an interest in the First National Bank of McMinnville or Otto Heider, in the truck?

A. They did not have it then.

Q. They did not have it then?

A. I checked at Salem and checked the title and the title was First National Bank of Portland and Walter Stegmann.

Q. First National Bank of Portland, I am sorry. In other words, it was The First National Bank of Portland?

A. They had a lien on it at the time Walt Stegmann's name was on the title.

Mr. Ryan: I am through, your Honor.

The Court: That is all.

Mr. Jaureguy: I want to ask one more question. You knew that Chet Parker bought this truck from Otto Heider, didn't you?

The Witness: Not until after they served papers on me.

Mr. Jaureguy: Then you did learn?

The Witness: Sure.

The Court: I thought that the First National

(Testimony of Millard Ellis.)

Bank of Portland had the lien. How did Otto Heider get into it? [1102]

Mr. Strayer: Heider does not appear in the Secretary of State's certification. If he had any interest, it must have been unrecorded.

Mr. Jaureguy: Well, it might have been a transfer of the bank's lien.

Mr. Krause: According to this statement here from the Secretary of State, Otto Heider never had any interest in this truck.

The Court: We will argue about those things later.

Number 80, the letter from the Secretary of State, may be admitted.

(Document previously marked Plaintiff's Exhibit 80 for identification was received in evidence.)

(Witness excused.) [1103]

RALPH COOKE

recalled, testified as follows:

Examination

By Mr. Buell:

Q. Mr. Cooke, I wonder if you could advise the Court as to whether or not the Forest Service would be interested in acquiring the 25-acre tract or the 16-acre tract which Mr. Parker bought on Lost Lake, which was formerly owned by the Winans?

A. Well, we are—the National Forest is always

(Testimony of Ralph Cooke.)

interested in consolidating their holdings of land that is primarily used for timber growing or of known recreation value, that is, land inside the boundaries of a National Forest.

The Court: What would you give him for it?

Ask him what he would pay for it or what they would pay for it.

Q. (By Mr. Buell): Are you in a position where you can give any statement at the present time as to about how much the Government would pay for it?

A. I could not, because we appraise the land and the values that exist on it. I don't know what reservations have been made on the tract of land, how much acreage there is left, or how much timber there is on it, so I couldn't hazard a guess as to the values.

Q. On the question of timber, could you say as to whether or not the Forest Service could make an exchange based upon an equal amount of footage on other property as is on the property that is to be exchanged, or as nearly equal an [1104] amount?

A. It would be unusual if the footage was equal. We exchange on values only.

Q. You exchange on values, and the values would be determined at the time of the proposed exchange; is that right? A. Yes.

Mr. Buell: That is all.

Mr. Jaureguy: No questions.

(Testimony of Ralph Cooke.)

Mr. Ryan: No questions.

Mr. Krause: No questions.

The Court: That is all.

(Witness excused.) [1105]

G. W. PARMAN

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. What is your name, sir?

A. G. W. Parman.

Q. Where do you live?

A. Scappoose, Oregon.

Q. What is your occupation?

A. Logging operator, contractor.

Q. Logging contractor. Do you know Mr. Chet Parker and Mr. Walter Stegmann?

A. I know Mr. Stegmann. I don't know Mr. Parker.

Q. When did you first meet Mr. Stegmann?

A. I can't tell you the exact date, but I believe it was in February, 1952.

Q. What was that in connection with?

A. I was, at that time I was associated with P & D Logging Company, and I was looking for timber.

Q. What logging company?

A. P & D Logging Company.

(Testimony of G. W. Parman.)

Q. What is that?

A. That was at that time composed of myself and a man by the name of Oren Davis. [1106]

Q. You were looking for timber, you say?

A. That is right.

Q. How did you happen to run into Mr. Stegmann?

A. I got hold of him. I heard about some timber that was up Slick Rock Creek near Rose Lodge, Oregon. I got hold of him through some friend of mine. I think by one of our truck drivers that knew that Stegmann had some association with some timber up Slick Rock Creek.

Mr. Jaureguy: What is that creek, Slick——

A. Slick Rock Creek.

Q. (By Mr. Buell): Did Stegmann have timber available?

A. He took me up after making an appointment to meet him. He took me up and showed me this area, the timber that he had to sell up on the Slick Rock Creek area.

Q. Who was the owner of that timber; do you know?

A. No, I do not. I didn't spend very much time on the timber because it didn't interest me too much, so I don't know who the owner was. I didn't look into the title of it.

Q. Well, did Stegmann show you any other timber?

A. Yes, he did. I asked him about some other plots of timber that he might have and he told me

(Testimony of G. W. Parman.)

that he had a batch of timber over at Gale's Creek and also up above Willamina for sale.

Q. Did he tell you he had timber of his own to sell, or timber of somebody else's?

A. He didn't tell me who was the owner of the timber at that [1107] time.

Q. Did you ever go to look at that timber with him?

A. Yes, I looked at both patches with him.

Q. That is the timber on Gale's Creek and by Willamina?

A. That is right.

Q. Had he made any offering price on it to you?

A. Yes, he made a price on both patches. They were round figure prices. I don't know as they were, well, I presume they would be called positive quotations, yes.

Q. How much timber was involved?

A. It has been quite a while ago. I couldn't find my notes on it, but, as I recall, the stipulated amount, or I should say the amount indicated by Stegmann on the Willamina timber was something like, I just don't know. This is a guess I am making. It was three or four million, and the area up by Gale's Creek, I believe, was supposed to be around four million feet.

Q. Then, did you ever make any offers on the timber, or what developed?

A. The area by Willamina, I wasn't particularly interested in it. The price was clear out of line, in my opinion, but the area at Gale's Creek was very interesting. He did give us a price quotation on it,

(Testimony of G. W. Parman.)

and I spent considerable time going through the timber trying to find out if the indicated scale was there. I checked into the title of it somewhat, and then I, following that I made an effort to contact Stegmann and get [1108] together with him on a deal with him.

Q. What did you find out about the title to the property that he had shown you?

A. I tried to find my notes on that this morning, and I couldn't locate them. I have them in the file some place, but I couldn't locate them, but my memory is that the majority of the land involved and pointed out to me, I think there was 11 forties, as I recall, was—the taxes on it were paid and I think it was in the, that the title was held by L. H. & L. Lumber Company, and the one forty, I believe, was held by Chet Parker, one forty or two, perhaps. I am not sure.

Q. Then did you ever have any dealings with, at all, with Mr. Parker in connection with that property?

A. Not directly. I made an effort to contact Mr. Parker on several occasions, and I did finally get hold of him on the telephone, by telephoning.

Q. By telephoning him where; do you remember?

A. I telephoned him at his brother's place in McMinnville.

Q. What did he have to say about this particular property?

(Testimony of G. W. Parman.)

Mr. Jaureguy: You mean the brother or Chet?

The Witness: It was Chet L. Parker who I asked for, and I assume it was Chet Parker I was talking to. It was represented as so.

Mr. Jaureguy: This is all in under our objection.

The Court: Well, this is—— [1109]

Mr. Jaureguy: This is different.

The Court: This is a different objection. He cannot show that he talked to Chet L. Parker.

Mr. Jaureguy: Go ahead. We will withdraw it.

The Court: If he did talk to Chet L. Parker, your other objection would be no good.

Mr. Jaureguy: That is correct.

The Court: You are not raising any objection?

Mr. Jaureguy: I am withdrawing the objection I started to raise; that is right. I will let it go.

Q. (By Mr. Buell): You say you called Oscar Parker's—or Chet Parker's brother at McMinnville and asked for Chet?

A. I called him several times looking for Chet Parker, yes, and finally one Sunday, I believe it was in March, I don't know the exact date, as I was coming back from Portland I stopped in and made the telephone call and did get hold of the house they told me was Chet Parker. I asked for Chet Parker, and this man came on the line, and I talked with him concerning the timber. I told him the proposition that we was offered, that we was willing to go with, and we talked over what would be desirable in the timber, and at that time, why, we made an

(Testimony of G. W. Parman.)

appointment to meet his representative, or he didn't say his representative. I should say to meet Mr. Stegmann at Bob Talbot's office and take an option on the timber.

Q. You say you made an appointment with Mr. Parker to meet [1110] with Mr. Stegmann at the Bob Talbot office to take an option on that particular timber? A. That is right.

Q. On just a forty, or on the entire 11 forties?

A. On the entire 11 forties.

Q. Then did you subsequently meet with Stegmann?

A. No, we went in the prescribed time, my partner and I and Stegmann didn't show up.

Q. Had Stegmann ever mentioned to you any interest of Chet Parker in the timber?

A. He had.

Q. What was said about Parker's interest in the timber?

A. It was not said positively, but he indicated to me on several occasions that Chet Parker was interested in the timber.

Q. But didn't tell you what the exact interest was, I take it?

A. No, he did not. That is why I went and checked the title.

Q. Did Mr. Stegmann ever make any concrete offers or propositions to you for the purchase of that timber? A. Yes, he did.

Q. Then, finally, did you ever get together with either Mr. Stegmann or Mr. Parker on the final

(Testimony of G. W. Parman.)

figure for the property, or did it go by the boards?

A. No, we never got together. Stegmann didn't show up to [1111] complete the option, and I was unable to get hold of him by telephone for perhaps a week or ten days. I am not sure just how long it was. When we finally did manage to get hold of Stegmann he said they were not interested in any option.

Q. During the course of your discussion with Stegmann, did he ever say anything about having to check with somebody else before he could make any change in the offering price or terms for sale?

A. He did, yes.

Q. Did he mention the person by name that he would have to check with?

A. I can't recall whether he actually mentioned anybody by name although Parker's name came into our conversation a few times.

Mr. Buell: I have nothing further.

Cross-Examination

By Mr. Jaureguy:

Q. Could you give us a little better idea of where this timber is, the township, for instance?

A. I cannot tell you exactly because it has been a year, nearly, since I have looked at that, and I just don't know. It is located out right close to the Forest Grove Water Shed and directly west of Gale's Creek, Oregon, approximately three miles.

Q. West of Gale's Creek? A. Yes. [1112]

(Testimony of G. W. Parman.)

Q. This was all in 1952 you are talking about?

A. Yes, that is correct.

Q. How much of the timber did you say you learned through tax receipts or something, tax statements or tax rolls, had belonged to Chet Parker?

A. I don't want to say positively. I know that one forty, and I believe maybe two forties, belonged to Parker.

Q. Where were those forties?

A. They were listed, I should say they were—well, I would almost have to show you a map to indicate where they were. These 11 forties were strung out over quite a little area. They were mostly all joined by corners, but the part that was owned, as indicated by tax payments or ownership title or some such matter that I took on the courthouse, was where most of your desirable timber was situated.

Q. You mean west of Gale's Creek, or down by Willamina?

A. West of Gale's Creek.

Q. That is where the forties were that—

A. Two forties still belonged to Parker, yes.

Q. I don't know as maybe you did, but can you give us some definite idea as possible as to the time that you talked over the telephone to the man that you thought was Chet Parker?

A. I can't give you a date. I am sorry, I cannot.

Q. Would it be February, 1952?

A. I think it is probably March. Quite a little time elapsed. [1113]

(Testimony of G. W. Parman.)

Q. Probably in March?

A. Quite a little bit of time had elapsed between the time I first started talking with Stegmann concerning timber when I finally got hold——

Q. You never did see Parker?

A. Never have seen Parker.

Q. The only time you think you talked to him, or talked to him, was that time over the telephone?

A. That is right.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Ryan:

Q. You say there were 11 forties involved in the property that was shown?

A. As I remember, eleven.

Q. As a matter of fact, didn't Mr. Stegmann tell you that that property was owned by Mr. Lessard?

A. Seward, you say?

Q. Lessard, something like that?

A. No, I don't recall the name.

Q. Do you remember who owned the other pieces?

A. L. H. and L. Lumber Company is who owned it, according to my check at Hillsboro.

Q. Have you ever talked to those people?

A. No, I haven't. [1114]

Q. Do you know whether Mr. Lassard is involved in that company?

A. No, I do not.

Q. In this appointment you had, Mr. Stegmann didn't show up for you, but you did talk to Mr.

(Testimony of G. W. Parman.)

Stegmann prior to that? A. Yes.

Q. You did?

A. Perhaps—I don't know for sure whether I did or not. I think that Mr. Parker told me he would contact Stegmann and arrange to meet at Bob Talbot's, although I may have talked to Stegmann prior to the meeting. I am not sure about that.

Q. You are not sure?

A. It was quite a while ago. I don't know.

Q. You do recall this telephone conversation of the meeting arrangements?

A. Yes, that is right.

Q. You say you looked up the tax title on that land when—or that you knew by name Chet L. Parker prior to looking at the tax title?

A. I beg your pardon?

Q. Did you know of the name Chet L. Parker with reference to this property prior to looking at these tax titles?

A. I had some understanding on it. I had it in my mind, although I don't know of any positive reference.

Q. Had there been any conversation about Mr. Parker being interested in picking up these 11 forties? [1115]

A. Mr. Parker's name had came up in our conversation.

Q. That is with Mr. Stegmann?

A. With Mr. Stegmann, yes.

Q. Is it possible that that might have been part of the conversation? A. Possibly.

(Testimony of G. W. Parman.)

Q. Then you did look up the names in the tax title, and you found out that there were 11 forties in the L. H. and L. Lumber Company and Mr. Parker was owner of two, is that correct.

A. As I recall it. It has been nearly a year ago, and I don't remember the exact circumstances for sure.

Q. Nothing came of this deal?

A. That is right.

Q. You never did purchase the property?

A. That is right.

Mr. Ryan: That is all.

The Court: Mr. Krause?

Mr. Krause: Nothing.

Redirect Examination

By Mr. Buell:

Q. Mr. Parman, do you know a realtor by the name of Lee Kennedy at Newberg? A. I do.

Q. Do you ever remember along about the spring of 1952 of telling Mr. Kennedy that he could contact Chet Parker through the [1116] Oscar Parker residence at McMinnville?

A. I don't know. I might have been able to because that is where I got hold of him. I don't know whether Kennedy ever——

The Court: What difference does that make?

Mr. Buell: I thought it might have some bearing on that telephone call, your Honor.

The Court: He does not have to corroborate

(Testimony of G. W. Parman.)

himself. The vice of this testimony is that he has never seen Mr. Parker, never talked to him before, and would not know whether the man who purported to be Mr. Chet L. Parker was, in fact, Chet L. Parker. That is the difficulty of this testimony. That is all.

(Witness excused.)

The Court: We will take a recess.

(Recess taken.) [1117]

JAMES KALDENBERG

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Kaldenberg, where is your home?

A. Up on the Washougal River in Washington.

Q. You are in the timber business, are you?

A. Logger, and buy little patches of timber.

Q. Now, did you have a talk with Mr. and Mrs. Parker early in 1952?

A. Yes.

Q. Where did that talk take place?

A. At my home on the river.

Q. What was the talk that you had with them at that time?

A. Well, I needed some financing for to buy some timber, and I found out through another per-

(Testimony of James Kaldenberg.)

son that Mr. Parker might help me out with the finance of the patch of timber.

Q. He said that he would help you out?

A. Yes, he probably could help me out, this other guy said.

Q. Now, a short time after that, 30 days or so, did you meet Mr. Stegmann?

A. Yes, about a month.

Q. That is Walter Stegmann?

A. Yes. [1118]

Q. Did you have a talk with him?

A. Yes, he come to the house, and we had a couple little deals together.

Q. What was your conversation with Mr. Walter Stegmann, now, when he came?

A. Well, he come——

Mr. Jaureguy: My same objection will go to this testimony, Your Honor.

The Court: All right.

The Witness: He came up to the house and he said that he had heard that I had a few small patches of timber around. He was coming up to help me to get them straightened around and that if we needed any big financing for big patches, why, we could sure get it.

Q. (By Mr. Strayer): Did you and Mr. Stegmann then get into some timber deals?

A. Yes, we had one of them.

Q. What did that deal involve?

A. Well, it was just a small deal. I think it was

(Testimony of James Kaldenberg.)

a couple hundred thousand, three or four hundred thousand.

Q. You bought that timber for how much?

A. Fifteen hundred dollars.

Q. Who put up the money to pay for it?

A. Walter Stegmann.

Q. How was the money paid? [1119]

A. Well, he had the cash, but he would rather have a cashier's check, so we went to Washougal, to the Washougal bank, to get a check—cashier's check.

Q. You say he had cash or what?

A. He would sooner have a cashier's check than the cash, so we went down to the Washougal bank in Washougal, Washington, got a cashier's check.

Q. That is, the seller wanted a cashier's check?

A. Yes.

Q. When you bought that cashier's check for \$1,500 and paid for the property, then did you sell the property? A. Yes.

Q. You sold it for how much?

A. For \$2,500.

Q. You made a profit, then, of \$1,000. What was done with that thousand dollar profit?

A. Mr. Stegmann gave me half, and he took half.

Q. Did you have any conversation with Mr. Stegmann regarding his method of financing that sort of transaction? A. No.

Q. Was the name of Mr. Parker mentioned in any of your dealings with Mr. Stegmann?

(Testimony of James Kaldenberg.)

A. Only if we would have a big purchase of timber.

Q. What did he say about that?

A. Well, he said he was sure Chet Parker would help us out if [1120] we needed financing if we found a big patch of timber.

Q. Did he say anything about any past transactions with Mr. Parker?

A. No, he said he had some kind of a deal with him, but I didn't pay any attention, regard to what it was.

Q. Was there another transaction on the Northwest Door timber?

A. No, me and Mr. Stegmann went up to Tacoma, Washington, and put in a bid on two sections of timber up in the Stebbin's Creek for \$70,000.

Q. Then what happened?

A. Well, later on the timber was sold.

Q. To whom?

A. Chet Parker, I guess. I don't know for sure.

Q. Did you have—he bought the timber for \$90,000; is that right?

A. That is what I heard.

Q. Now, did you have a conversation with Mr. Stegmann about that?

A. Well, I thought the deal was kind of funny. I figured maybe they was trying to get around me, but I have no proof of it.

Q. What did he say about it?

A. He didn't say much of it. He denied it and that is all, denied having anything to do with it or anything.

(Testimony of James Kaldenberg.)

Q. What did he say, if anything, about future financing? [1121]

A. Well, I thought maybe it was better we would not go for any financing with Parker, so he thought maybe he could get financing from a person by the name of Hutchinson, something like that.

Q. He mentioned someone by the name of Hutchinson, did you say?

A. Hutchinson, something like that.

Q. Did he say where this man lived?

A. Down towards the Coast some place.

Q. All right. Now, did you have any talk with Mr. Stegmann regarding some timber up around Hood River?

A. He told me that they had a patch up around Hood River of some awfully nice timber.

Q. Did he say how much it was, how much land involved?

A. He said between 40 and 60 acres, I think, and he said there was between four and six million feet.

Q. What did he say they wanted for it?

A. What?

Q. What did he say they wanted for it?

A. I forget what the price was on it.

Q. Did you and Mr. Stegmann make any effort to sell that?

A. No, we went up and talked to a person I knew at Stevenson, but there was too much snow and stuff on the ground to go up there.

Q. So the result was you were not able to make any deal on that timber? [1122]

A. No.

(Testimony of James Kaldenberg.)

Q. Was it about that time that you and Mr. Stegmann terminated your relationship?

A. No, it was later on.

Q. About what date was it, your last business deal with Stegmann? A. I think in May.

Q. May of 1952? A. Yes.

Q. And you have had no dealings with him since then? A. No.

Q. Or with Mr. Parker? A. No.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. Did you say you had a talk with Parker at some time or other? A. Yes, in my home.

Q. About what?

A. Well, just like all the rest of the gyppo loggers, lots of us ain't got enough money to finance the timber so I happened to be in a tavern. I happened to hear his name mentioned. They said he would finance timber. I called him at McMinnville. I don't know what number it was. Him and his wife came to see us. He told me if we needed any help, I mean any financing of any [1123] big timber deals or anything like that, he would come out and check it over, and if it was all right, he would finance it.

Q. Also there was talk about buying a donkey from him, wasn't there?

(Testimony of James Kaldenberg.)

A. Yes, but that was before I even knew them hardly at all.

Q. Oh, that was before this talk? A. Yes.

Q. But you never called on him for any financing, as I understand it? A. No.

Q. When was this—you say that was in 1952?

A. Oh, 1951, in the fall.

Q. 1951? A. Yes.

Q. Didn't you say in your direct examination it was 1952? A. What?

Q. Didn't you say a little while ago it was 1952?

A. Maybe I did, but it was '51. That is the truth.

Q. Could you give us an idea of the month?

A. It was in October or November.

Mr. Ryan: Excuse me, was that '52?

The Witness: '51.

Q. (By Mr. Jaureguy): That earlier talk about the donkey engine and this talk where he and his wife said that if you needed some financing, why, they would be glad to talk to you——

A. Yes. [1124]

Q. ——those are the only talks that you have ever had with Parker?

A. Well, I didn't talk to Mr. Parker about the donkey. I was talking with Mrs. Parker.

Q. You didn't with Mr. Parker about the donkey? A. Mrs. Parker.

Mr. Strayer: Mrs.

The Witness: Mrs. Parker about the donkey.

(Testimony of James Kaldenberg.)

Q. (By Mr. Jaureguy): Mrs. Parker about the donkey, and the two of them about financing?

A. Yes.

Q. Then you and Stegmann bought from three to four hundred thousand feet for \$1,500?

A. Yes.

Q. And sold it for \$2,500? A. Yes.

Q. You didn't need any financing for that, I don't suppose? A. No.

Q. Stegmann had some cash for that?

A. Yes.

Q. Did Parker bid against you and Stegmann on the Northwest Door?

A. Well, that there I never, well, no—he got it.

Q. Stegmann got it; he bought it—I mean, Parker bought it? A. Yes.

Q. And so he must have bid for it if he [1125] bought it? A. Yes.

Q. Where were you and Mr. Stegmann going to get the money in case you got the bid?

A. I don't know.

Q. You don't know about that? You put in a bid, did you? A. We put in a bid.

Q. You didn't have to put any certified check in with your bid?

A. No; we just put in a verbal agreement on bid.

Q. Did you tell them, the Northwest Door, Mr. Ossler or any of them, that you were bidding but you would have to go out to get some money if you got it? A. No; never asked us.

Q. Was this oral, or did you write a letter?

(Testimony of James Kaldenberg.)

A. No; it was oral. We went right up to the office, talked to Ossler in the office.

Q. Where was the office? A. Tacoma.

Q. Tacoma, and you made an offer of some kind, didn't you? A. Yes.

Q. Then later you found out that Parker had bought it? A. Yes.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Ryan:

Q. Isn't it a fact, Mr. Kaldenberg, that the deal you and Mr. [1126] Stegmann were going to make with Northwest Door was this, that you paid \$70,000, but you inquired at the time what was the least amount you would have to put down to make that deal? A. Yes.

Q. What did they tell you?

A. \$25,000, I think.

Q. \$25,000, and did you carry the deal any further from there?

A. No; we wrote them a couple letters, and they wrote back, and that was the end.

Q. You never went out to get the \$25,000?

A. No.

Q. Now, after this Northwest Door deal, isn't it a fact that you borrowed \$750 from Walt Stegmann or \$700 and some odd dollars?

A. Well, it went down the line from while he was out there when I first knew him until afterwards when it was kind of hard going.

(Testimony of James Kaldenberg.)

Q. He did loan you some money during this period? A. Yes.

Q. You have repaid him? A. Yes.

The Court: You are not on friendly terms with Mr. Stegmann, are you?

The Witness: No, I ain't unfriendly to him. I don't—I don't know what to say.

Mr. Ryan: I have no other questions. [1127]

Cross-Examination

By Mr. Krause:

Q. Mr. Kaldenberg, I didn't get this. The first time you met Parker was in October of 1951?

A. Around that time.

Q. Around that time? A. Yes.

Q. That is the only time you saw him?

A. I didn't see Mr. Parker then. I seen Mrs. Parker.

Q. Well, that was on a donkey deal?

A. Yes.

Q. You saw her at that time, but when was the first time you saw him?

A. It must have been about in November, sometime the first part of November or last part of October, about a month after, I guess, something like that.

Q. Now, did he tell you anything about Stegmann at that time? A. No.

Q. When Stegmann called on you thereafter, had you ever met Stegmann before? A. No.

Q. Did you have any idea about how Stegmann

(Testimony of James Kaldenberg.)

had come to see you? A. No.

Q. Stegmann didn't tell you how he happened to come? [1128]

A. Well, he said something when he come there that he come to help me. He heard that I had a few patches, little patches of timber around there, and I told him then that I didn't have any money for financing any timber, and he said, well, he could get the money financed from—if we had big patches or good patches we could get it from Parker.

Mr. Krause: I think that is all.

Redirect Examination

By Mr. Strayer:

Q. Did Mr. Stegmann ever indicate how much, how large a deal he could finance?

A. No, he said he could go up to \$80,000 if he had to.

Q. When you paid \$70,000 on that Northwest Door timber, did you and Mr. Stegmann have any understanding about how that was going to be financed? A. No.

Q. When you learned that \$25,000 had to be paid down, did you and Stegmann discuss how it might be handled? A. No, not at that time, no.

Q. Did you later on? A. No.

Q. Well, I'm a little confused in my mind. How did you drop that? Did you consider that was too big a deal to swing, or what was the reason?

A. No, I never figured we had to have a down payment until the [1129] bids come up. He told us

(Testimony of James Kaldenberg.)

that he would have to talk to the president of the company and ask about what we would be willing to pay for the timber.

Mr. Strayer: I see. That is all.

The Court: You had written two letters to the Northwest Door?

The Witness: Yes.

The Court: Did you get answers to the letters?

The Witness: Yes.

The Court: What were the answers?

The Witness: Well, later on they said—the first letter said that they were going into conference about it and they would let us know. The second letter later on said that the timber was disposed of.

Mr. Strayer: The timber had been sold?

The Witness: Yes.

Mr. Strayer: That is all.

Mr. Krause: You and Mr. Stegmann live in the same town in Washington, don't you?

The Witness: No; I live about 7 miles.

Mr. Krause: You live outside, but you live in the same areas as he does?

The Witness: Yes.

Mr. Krause: Are you known to be in the timber trading business, logging business, in [1130] Washington?

The Witness: Yes.

Mr. Krause: That is all, your Honor.

The Court: That is all.

(Witness excused.) [1131]

GLENN JOHNSON

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Johnson, where do you live?

A. McMinnville, Oregon.

Q. What is your occupation?

A. Car salesman for Gilbert & Tilbury.

Q. What was your occupation in November and December, 1950?

A. Used car salesman for Gilbert & Tilbury.

Q. That is a car dealer in McMinnville, is that correct?

A. That is correct.

Q. Do you recall an incident, either the latter part of 1950 or the forepart of 1951, when Mr. Chet Parker—first I will ask you, do you know Mr. Chet L. Parker?

A. Yes, I do.

Q. Do you know Walter Stegmann?

A. I know him by sight.

Q. Do you recall an incident along about that period of time when Mr. Parker came in and wanted to trade in a 1948 Jeep on a used Jeep pickup?

A. Yes, I do.

Q. Could you pinpoint the time at all as to whether it would be in 1950 or 1951? [1135]

A. I believe it was the very latter part of 1950.

Q. When Mr. Parker came in with that proposed deal, did he talk with you?

A. Pardon?

(Testimony of Glenn Johnson.)

Q. When Mr. Parker came in, did he talk with you?

A. My sales manager and myself were standing on the sidewalk and Chet Parker drove up to the curb and talked to both of us simultaneously.

Q. What did he say he wanted?

A. He said he was interested in this 1949 Willys pickup and wanted to know what difference we thought we should have.

Q. In other words, when you say what difference you thought you should have, you mean cash difference in addition to trading in some car he already had?

A. That is correct.

Q. Do you recall what he had that he wanted to trade in?

A. A 1948 civilian Jeep.

Q. Did you or your used car manager quote him a price for the difference?

A. We did, and I don't remember the exact amount. I believe it was about \$800.

Q. Did Mr. Parker make any offer at that time?

A. Yes, I think he offered four, and in a little controversy I think he said he would go five hundred.

Q. What happened then?

A. Well, then, my manager said that he would not go for five, [1136] so Chet said, "Think it over." He had done business there for several years in the past years, and he just drove up and said, "Think it over."

Q. Then following that incident, did Mr. Walter Stegmann come in to your place of business there

(Testimony of Glenn Johnson.)

inquiring about the possibility of purchasing a Jeep?

A. Yes, he did. I would judge it would be about a week later. I don't know the exact days later, but approximately a week later.

Q. What kind of a Jeep did he say he wanted?

A. A late model, somewhere around in the neighborhood of 1948 civilian Jeep in good shape.

Q. What did you tell him?

A. I told him I didn't have any in stock, but I did have a possibility of trading for one, of two different Jeeps.

Q. What were the two different Jeeps that you had in mind?

A. One was Charley Steller's at Yamhill, and the other was Chet Parker's.

Q. Did you tell Mr. Stegmann whose Jeeps you had in mind?

A. Yes, I did.

Q. Were you able to quote him any price at that time?

A. At that time I didn't. I suggested either I take him out there the following day or that he could see them himself, and it would be arranged in a three-way deal, you might term, which is not extraordinary. It happens many times. [1137]

Q. What did he say with that? Did he say he would go with you or take a look at them himself?

A. He said he thought he had time that day, that he would look at them himself.

Q. Then did he come back later?

A. Yes, he came back later.

(Testimony of Glenn Johnson.)

Q. About how much later, do you recall?

A. I don't recall whether it was the same day, later on in the afternoon, or the next day.

Q. Well, what did he say when he came back?

A. He said he was interested in Chet Parker's because it was a Jeep in the condition in which he was interested.

Q. Did you make any kind of a deal with him on it?

A. Yes, we arrived at a figure of \$1,350 retail price on Chet's job, and at that time he made—we drew up a retail order for him, and he made a \$50 deposit, which you might term earnest money, on Chet's Jeep, on his 1948 Jeep.

Q. Then what was the next thing that you did in reference to the transaction?

A. Then the next thing was either the general manager or sales manager, I don't know which, called Chet and told him that we had a deal on his unit at which we could come down to his figure and deal with him on the unit that he was interested in.

Q. Did he come into the shop there in response to that call?

A. Yes, and then Chet came in and we consummated the deal between Chet and us. [1138]

Q. Were you present when he was down?

A. Yes.

Q. What was the price that you arrived at, the difference for the—in addition to the trade-in of the '48 Jeep?

A. \$450.00.

Q. Was that paid by Mr. Parker?

(Testimony of Glenn Johnson.)

A. Yes, it was.

The Court: In other words, did you allow him \$800?

The Witness: No, it would be nine hundred over thirteen, yes, nine hundred.

Mr. Buell: I think, if the Court please, Mr. Johnson's testimony was that the original deal was that Gilbert & Tilbury wanted \$800 cash in addition to the '48 Jeep for the transaction; is that correct?

The Witness: That is correct.

The Court: He finally got \$500?

The Witness: \$450, difference between the two.

Q. (By Mr. Buell): What was the next step after that, sir?

A. Well, then, I contacted, or by mail, I mailed Mr. Stegmann a card telling him that we had consummated the deal with Mr. Parker on this '48 Jeep and had it in stock now and which he had a deposit on, to come in and get his unit.

Q. Did he come in?

A. Yes, he came in and said he had difficulties which prohibited him from continuing or taking the unit, taking delivery of it. [1139] He had to give up the purchase of the vehicle.

Mr. Buell: We have no further questions.

Cross-Examination

By Mr. Jaureguy:

Q. How much earnest money did you get from Stegmann? A. \$50.

(Testimony of Glenn Johnson.)

Q. \$50, and he forfeited that?

A. Yes, in accordance——

Q. So you finally ended up the same way you were on the first conversation with Chet?

A. So far as the company was concerned, yes, and of course the two didn't have any bearing on that to begin with. As a result, yes, that is what happened as a result.

Q. Chet Parker had bought a lot of equipment from your company, hadn't he?

A. Yes, he had.

Q. Had he always paid for it promptly?

A. Yes, sir, cash.

Q. In this case he paid \$450 cash, did he?

A. Correct.

Q. So you ended up just the way you were the first time he talked to you except that you were out your trouble in talking to Stegmann?

Mr. Strayer: Well, just a moment.

The Court: No, he is out \$250. [1140]

Mr. Jaureguy: I didn't get that.

The Court: Offered eight.

Mr. Jaureguy: Let me ask, your superior, the man that was with you, offered it to Chet for \$800 difference?

The Witness: I believe that was the figure that he asked.

Q. (By Mr. Jaureguy): But he came down to five hundred before the conference was over, is that right? A. No.

(Testimony of Glenn Johnson.)

Q. Oh, he didn't?

A. There was no consummation of the deal at that time.

Q. I understand no consummation, but that he had come down to five hundred if Chet wanted to take it at that price?

A. No.

Q. Oh, that was not it?

A. No, Chet offered five hundred as a standing offer, and they decided not at that time to—they wouldn't go for that figure, so Chet said, "Well, think it over," and drove off, which is quite customary with all customers of ours, and we just bore that in mind if we at a later date found someone that is interested in their vehicles. Sometimes we can arrange a better figure for them.

Q. But when you arranged the deal with Stegmann did you have in mind \$500 from Parker, or did you have in mind getting more than that from Parker?

A. We had in mind getting five hundred then, in other words, [1141] going to his offer rather than ours.

Q. Oh, yes, and then, but when he came in, then he wanted to make a deal for four hundred and fifty?

A. Well, yes, that goes into the monkey business of car-jockeying.

Q. You said something here was not extraordinary. Wasn't that extraordinary for somebody to jockey around on used car prices?

A. No, that is not extraordinary.

(Testimony of Glenn Johnson.)

Q. Quite common?

A. That is very common.

Q. Does Chet Parker owe your company anything; do you know?

A. It wouldn't be to my knowledge if he did. I don't think he does.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Ryan:

Q. Mr. Stegmann told you he had some personal difficulties that made him unable to go through with the deal?

A. That is as I recall it. As I recall, it was sickness in the family. I don't know exactly as that was right, and, as I remember, it was some personal difficulties that prohibited him from going through with the original deal that we had agreed on.

Q. Would it refresh you at all if I asked him if he told you he had to take his wife to California on doctor's orders?

A. That is right, you are right. [1142]

Q. You retained the \$50 earnest money?

A. That is right.

Q. That was the end of the deal?

A. That was the end of the deal.

The Court: Did Mr. Stegmann tell you he was a good friend of Chet Parker when you told him about that car?

The Witness: No, sir. He never mentioned Mr.

(Testimony of Glenn Johnson.)

Parker's name. I mean, the two related to each other in any way was never mentioned or brought to my attention.

The Court: He didn't mention that he knew Chet Parker?

The Witness: No.

The Court: How did he know where to find Chet Parker? Did you tell him where he lived?

The Witness: No, I didn't, but Chet is well known there. It would not be hard to find him at McMinnville. I mean, he could have asked any number of people. They could have told him.

The Court: When he came back and told you that he liked Chet Parker's Jeep, did he tell you then that he was acquainted with Mr. Parker?

The Witness: No, sir.

The Court: That is all.

Recross-Examination

By Mr. Jaureguy:

Q. Well, all three of you lived there in McMinnville. [1143] A. Pardon, sir?

Q. All three of you lived there in McMinnville?

A. Yes, sir.

Q. You had known both of them for some time, had you not?

A. You mean did I know Mr. Stegmann?

Q. Stegmann and Parker.

A. No, sir.

Q. You had known Parker for some time?

(Testimony of Glenn Johnson.)

A. I had known him as a speaking acquaintance, not a personal friend, but as a speaking acquaintance. I know Mr. Stegmann only as by sight. The first time I had seen him was when he come on the lot.

Mr. Jaureguy: That is all.

Mr. Ryan: No questions.

Mr. Buell: I have nothing further.

Cross-Examination

By Mr. Krause:

Q. Did you fix the time that this occurred?

A. No.

Mr. Strayer: Pardon me, the date of Mr. Parker's check for \$450 was December 1, 1950.

The Witness: Well, that would be it.

Mr. Strayer: I beg your pardon, no, wait a minute, yes, December 1, that's right.

The Court: 1950?

Mr. Strayer: Yes. [1144]

Q. (By Mr. Krause): How long prior to December 1 did that deal start, approximately? That is, that was the date on which Parker took delivery of that Willys? A. That is correct.

Q. And paid you by check. Now, how many days before that did Parker first come in with the proposal to trade?

A. I should judge about a week.

Q. You should judge about a week?

A. Yes.

(Testimony of Glenn Johnson.)

Q. And Stegmann came in after Parker had been in the first time? A. That is correct.

Q. Did he pay you this deposit? Was that in cash or by a check?

A. I don't recall whether it was or which way it was. Our books would show it, the company's books.

Q. It would show whether it was cash or check?

A. Oh, yes, but I don't recall now.

The Court: Will you check your books to determine whether it was a check or cash?

Mr Buell: I think I can help the Court out on that. I called their office again today to see if there was any way of trying to tie that down, and talked with Mr. Rogers, who is office manager, and to Mr. Cohen, and upon further looking they advised that it was by cash and that they had a record of a receipt dated November 28, 1950.

The Court: It was cash, and not a check? [1145]

Mr. Buell: Yes. I can get them to confirm that by letter.

The Court: I do not think it is necessary.

Mr. Ryan: We won't require any confirmation of that.

The Court: That is all.

(Witness excused.)

Mr. Strayer: Now, in this connection I call the Court's attention to the fact that the Parkers' checks which are in evidence, there is one for \$50 from Parker to Walter Stegmann dated November 29, 1950.

The Court: When was the cash given?

Mr. Buell: November 28th. [1146]

FORREST DAVIS

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Davis, where do you live, sir?

A. Willamina, Oregon.

Q. Did you obtain an option of some property of Mr. Chet L. Parker in Section 12, the west half of the northwest quarter of Section 12, on the Pea Vine Road just outside of McMinnville last year?

A. Yes, I did.

Q. Who was it that first — that was an 80-acre tract, was it? A. Right.

Q. Who was it that first advised you of the property? In other words, how did you learn — from whom did you learn of the property?

A. A Mr. Wardell.

Q. Is that Paul Wardell? A. Right.

Q. Is he the man that used to run a store at Buell, Oregon? A. That is right.

Q. Do you have any of the options that you acquired on that property? A. I do. [1147]

Q. Did you acquire two options? A. Yes.

Q. Do you have those with you, please?

A. Yes.

(Documents produced.)

(Testimony of Forrest Davis.)

Mr. Buell: While I am interrogating the witness, I will show these to counsel, and they can be examining them.

Q. The purchase price called for in this option was \$35,000; is that right, sir? A. Right.

Q. Did Mr. Wardell take you out and show you the property?

A. Showed me one corner and designated by direction where the rest of it was, the other corners.

Q. Was there timber on the property that Mr. Wardell showed you?

A. About two million feet, board feet.

Q. Then did you make any efforts to attempt to sell the option to somebody else?

A. My first option, about a week I had on the first option.

Q. Whom did you try to interest in that?

A. Oh, various mills and so forth around Willamina.

Q. Then did that option expire before you found a purchaser, did it?

A. Well, no, a Mr. Smith finally was going to buy it before that option ran out. Then I got an extension on it. [1148]

Q. Finally did you find somebody who was going to—or just go ahead and tell the story in your own words. Maybe we can shorten it up a little.

A. Well, then, Mr. Smith, after he decided he couldn't buy it or was not going to, turned as a partner of mine, and we sold it together to a Mr. Hewlitt, the option.

(Testimony of Forrest Davis.)

Q. And it was for how much money?

A. Five hundred.

Q. To whom did you give that check?

A. To Mr. Parker.

Q. Do you have that check with you?

A. Yes, I do.

(Document produced.)

Q. Where had Mr. Wardell gone in the meantime? A. Well, he was with the third-party.

Mr. Jaureguy: He was what?

The Witness: The third-party partner.

Mr. Jaureguy: He was a third party?

The Witness: Yes, sir.

Q. (By Mr. Buell): Did you pay him any money for the——

A. Well, the check was—we were to receive a commission besides the \$35,000 which was to be divided among the three of us.

Q. That would be between you and Smith and Paul Wardell? A. That is right. [1149]

Q. That is, provided that Mr. Hewlitt purchased the property? A. Right.

Q. Then what was the next step in the transaction after you got the \$500 check from Mr. Hewlitt?

A. I endorsed the check at Vancouver to Mr. Parker, and then—it was Mr. Bergstrom who surveyed the land to make sure the corners were established just right.

Q. Who took Mr. Bergstrom out to see the property?

(Testimony of Forrest Davis.)

A. Two employees of Mr. Hewlitt, Mr. Smith, and myself and Mr. Wardell.

Q. Was Mr. Wardell with you when you went out with Mr. Bergstrom? A. I believe so.

Q. Did you point out to Mr. Bergstrom the same property that Mr. Wardell had originally pointed out to you? A. Yes, sir.

Q. What happened when Mr. Bergstrom started to make his survey?

A. Well, before he ever started he said he knew the property we were on was Government timber, and consequently we looked up the quarter corner post, which is a U. S. Geodetic Survey post. The post had been moved 1,320 feet lacking 50 feet. In other words, 1,270 feet east of where it ordinarily would have been placed.

Q. Then did Mr. Hewlitt ever exercise the option?

A. No, at that time it stopped. [1150]

Q. Did you ever get a refund of the \$500 purchase price? A. No.

Mr. Buell: I'd like to have these three exhibits marked, if I may.

(Check from Hewlitt to Davis marked Plaintiff's Exhibit 83 for identification.)

(Document, option, marked Plaintiff's Exhibit 84 for identification.)

(Document, first option, marked Plaintiff's Exhibit 85 for identification.)

(Testimony of Forrest Davis.)

Q. (By Mr. Buell): Mr. Davis, could you tell us where that property that was actually owned by Mr. Parker in that Section 12, where was that located with reference to the Government timber that you just referred to that you said Mr. Bergstrom said was Government timber rather than Parker's?

A. Mr. Parker owned eighty acres west of the 40 acres of Government timber.

Q. On the land that Mr. Parker owns, is there any timber on it?

A. Possibly twenty, twenty-five thousand board feet.

Q. Is that pasture land, or is that logged-over land?

A. That is logged-over land, really not good for anything.

Q. I hand you what has been marked for identification as Exhibit 85, and ask you if that is the first or second option that was given you on the property? A. This is the first. [1151]

Q. And then 84, that would be the second; is that correct? A. That is right.

Q. And this check which has been marked as Exhibit 83, that is the check that you just referred to that was given to you by Mr. Hewlitt and then endorsed over to Mr. Parker; is that right?

A. Right.

Mr. Buell: I have no further questions. We will offer these, but we are going to have to tie it up with additional testimony from another witness.

(Testimony of Forrest Davis.)

Mr. Jaureguy: You say you are offering it now?

Mr. Buell: I say we will have to tie it up with another witness.

Mr. Jaureguy: I wish to move that all the evidence given by this witness be stricken as incompetent, irrelevant and immaterial and having no bearing on the issues of this case.

The Court: I think the theory of it is that Mr. Parker has been guilty of a number of fraudulent actions, all somewhat the same type and character, and that it may be introduced for the purpose of showing intent. Is that the purpose; am I correct in that?

Mr. Buell: That is one purpose. There is another, your Honor, and that is connecting Mr. Stegmann with this transaction.

The Court: How would Mr. Stegmann—I thought it was Mr. Wardell who showed him around?

Mr. Buell: Well, it was Mr. Stegmann who first took Mr. [1152] Wardell out and showed him the property with the timber on it and pointed out the timber for sale. I cannot prove it all by one witness.

The Court: We will take your motion under advisement.

Cross-Examination

By Mr. Jaureguy:

Q. What did you say was moved for a quarter mile?

A. A U. S. Geodetic Survey post, which is 36-

(Testimony of Forrest Davis.)

inches long, $2\frac{1}{2}$ in diameter, with a three-inch cap, bronze.

Q. How do you know how long it is?

A. Well, the standard, that is the standard U. S. Geodetic Survey post.

Q. Where did you learn that?

A. Well, I have dealt in timber a little bit here and there.

Q. Have you moved any of them yourself?

A. Not over a dozen.

Q. Not over a dozen? A. No, none.

Q. Now, ordinarily there is a bearing tree of some kind in connection with these corners; is there not? A. Yes, sir.

Q. Was the bearing tree moved, too?

A. No, sir.

Q. That was back where it was supposed to be?

A. Right. [1153]

Q. You don't know who moved this Geodetic Survey marker? A. No, sir.

Q. Nor when it was moved? A. No.

Q. Has anybody ever purported to tell you when it was moved or by whom? A. No.

Q. Now, when you first got an option from Mr. Parker, he said you could have it for nothing, didn't he? A. Yes, ten dollars.

Q. What is that?

A. With the exception of ten dollars.

Q. Well, didn't he tell you that he would receipt that you gave ten dollars, but you didn't even pay him anything? A. Yes, right.

(Testimony of Forrest Davis.)

Q. And that he urged you to take it for nothing, and you insisted you wanted some money, I mean, you wanted to pay for it; that is correct, isn't it?

A. No.

Q. That is not correct. Then, did you go up to his attorney, or did he go up to his attorney to have the option prepared?

A. I went up to his attorney along with Mr. Wardell and Mr. Parker.

Q. I beg your pardon?

A. I went up to his attorney along with Mr. Wardell and Mr. [1154] Parker.

Q. I am talking about the first option.

A. I don't remember offhand.

Q. That first option you got when you went up the first time, you didn't pay anything for the option, did you? A. Right.

Q. He gave you that for nothing?

A. Right.

Q. Then when you wanted an extension, he wanted to give you that for nothing, too, didn't he?

A. No.

Q. He didn't. And then you went up—did he go up to the attorney's with you again that time?

A. Yes.

Q. At that time you wanted to pay \$500, and didn't Mr. Crow—Mr. Crow then telephoned to Mr. Parker and said you were there? A. Right.

Q. And wanted to pay \$500; is that correct?

A. Partially.

Q. Well, what is wrong with it?

(Testimony of Forrest Davis.)

A. Well, at that time Mr. Parker came up, and I had the check for \$500, but my time on my first option had run out.

Q. Well, after this conversation, you went to Vancouver and took the check with you to Vancouver, didn't you? A. Yes, sir. [1155]

Q. Well, but I am talking about now, about the telephone conversation between Mr. Crow, who was Mr. Parker's attorney, when you were there but Mr. Parker was at his home, and do you remember Mr. Crow calling Mr. Parker by phone and saying you wanted to pay \$500? A. Yes.

Q. Did you hear the answer that Mr. Parker gave over the phone? A. No.

Q. Did Mr. Crow tell you what Mr. Parker said over the phone? A. Yes.

Q. Did he tell you that Parker said he didn't want the \$500; you could have the extension without paying for it? A. I don't remember.

Q. But it would be all right to receipt in there that you paid five hundred, but that he didn't want the five hundred?

A. The option called for five hundred.

Q. I am not asking you that. I am asking what Mr. Crow told you at the time. A. No.

Q. This may seem funny to you, but it is not funny to us. Just answer our questions, please.

Will you read the question, please?

(Last question read.)

Q. Is that correct? [1156]

A. I don't know.

(Testimony of Forrest Davis.)

Q. How did you happen then to take the check out to Mr. Parker's instead of leaving it with Mr. Crow?

A. Well, Mr. Parker evidently, over the phone, according to Mr. Crow, said it would be all right for us to deliver the check to him in Vancouver.

Q. Well, as a matter of fact, didn't Mr. Crow say that Mr. Parker said you could have the extension for nothing? A. I don't know.

Q. You don't know that. Now, do you mean to be charging that Mr. Parker here moved the quarter corner? A. No.

Mr. Strayer: I object to that, your Honor. It is not the witness' purpose to make any charges.

Mr. Jaureguy: He is making many, though. What do you mean here? I can ask him whether he means to charge it.

Q. Your answer is "no," as I understand it?

A. Right.

Q. Do you mean to intimate that somebody tried to put over a fraud on you by moving that corner?

A. I have no way of knowing. Mr. Parker never showed me the timber or the ground.

Q. What is that?

A. I have no way of knowing. Mr. Parker never showed me the timber nor the ground. [1157]

Q. As a matter of fact, Mr. Parker never purported to go up and show you any of his property, did he? A. Right.

Q. The only one that showed you the property was Wardell? A. Right.

(Testimony of Forrest Davis.)

Q. Now, let us see who these other people are. That was you and Smith that were in together?

A. Yes.

Q. Davis and Smith, and then how did Wardell get in on it? A. He introduced me to it.

Q. He introduced you to whom?

A. To the——

Q. To the deal? A. To the option, yes.

Q. Then didn't he get interested in it some way or other, didn't you say?

A. He had a partnership in the \$5,000 that was supposed to be paid as our bonus for the sale.

Q. That is, you were to sell the option for Hewlitt? A. Yes.

Q. For how much?

A. A settlement of a, total settlement of \$5,000 with \$500 down.

Q. He paid the \$500 down?

A. Correct. [1158]

Q. And then he was supposed to pay \$4,500 more cash? A. Right.

Q. Wardell had an interest of how much in the \$1,500? How did he get that?

A. Well, we were partners on it.

Q. I beg your pardon?

A. We were in partners on it.

Q. That is, you and Davis and Smith were in partners on that? A. Correct.

Q. You and Wardell and Smith?

A. Right.

Q. Who got that \$500?

(Testimony of Forrest Davis.)

A. The check was made payable to me and I turned it over to Mr. Parker.

Q. That is the same check that you insisted on paying for the extension of the option?

A. That is the same check that I paid Mr. Parker, right.

Q. That is, you handed him Hewlitt's check?

A. Right.

Q. Then, in addition, you were to get a commission? A. Yes.

Q. Who were you to get that from?

A. Mr. Hewlitt.

Q. Well, he was the buyer?

A. Right. [1159]

Q. You mean you were to get the balance of \$5,000 as your commission? A. Right.

Q. Then Hewlitt was going to sell it to somebody named Bergstrom; is that right?

A. I don't know.

Q. Didn't you say that Hewlitt's employees went out to show it to Bergstrom?

A. Bergstrom is a surveyor. He does Mr. Hewlitt's surveying for him.

Q. And Mr. Bergstrom then went out and found out that the quarter corner was located in the wrong place? A. Right.

Q. Was it located exactly on where another quarter corner was supposed to be? A. No.

Q. But the bearing tree had not been moved?

A. Right.

(Testimony of Forrest Davis.)

The Court: We will take a short recess.

(Recess taken.)

Mr. Jaureguy: No more questions.

Mr. Ryan: I have no questions.

The Court: Mr. Krause, did you interrogate this witness?

Mr. Krause: I have not, your Honor, and I do not think we have anything. [1160]

The Court: Are you through with him?

Mr. Buell: That is all.

(Witness excused.) [1161]

C. O. BERGSTROM

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is C. O. Bergstrom, is it not?

A. Yes, sir.

Q. Where do you live, Mr. Bergstrom?

A. Five miles southwest of McMinnville.

Q. What is your occupation?

A. I do timber cruising and one type of surveying, and then I live on a ranch.

Q. Did you undertake to locate the lines on the west half of the northwest quarter of Section 12, in Township 4 South, Range 6 West?

A. Yes, sir.

(Testimony of C. O. Bergstrom.)

Q. When did you undertake to do that?

A. Well, I have been up there a dozen times, and I couldn't just remember. I was up there in June, 1950, 14th of June, and I was up there in June 5 and 6 in 1951, but that is the only dates I can remember.

Q. What was the date that you went up on behalf of Mr. Hewlitt, Hewlitt Logging Company?

A. July 29, 1952.

Mr. Jaureguy: I didn't get the last year. [1162]
The Witness: 1952.

Q. (By Mr. Buell): Who did you go up with?

A. There was Roy Hirst and Mr. Davis and Mr. Smith.

Q. That is the Mr. Davis who was just on the stand?

A. Yes, sir, and then a man that worked with me, C. P. Rosenbaum, was with me.

Q. You were employed by Mr. Hewlitt; is that correct? A. Yes, sir.

Mr. Buell: I think probably the quickest way we can handle this is if we can have a blackboard, and Mr. Bergstrom could put in his testimony a little quicker, I think.

The Court: Bring that blackboard.

(Blackboard produced.)

Mr. Jaureguy: This all goes in under our objection, and we may have to ask for a postponement in order to get our witnesses to testify.

Mr. Ryan: Your Honor, we would like to enter

(Testimony of C. O. Bergstrom.)

an objection at this time as to the relevancy of this testimony.

The Court: I don't know the relevancy at this time. There has been no evidence that Mr. Parker or Mr. Stegmann knew that the stakes had been moved, but I don't know what the other testimony is going to be. Proceed.

Q. (By Mr. Buell): Would you come down and take that piece of chalk there, please, and just draw in the section involved so that we can see it on the blackboard? [1163]

(Witness draws on blackboard.)

A. This would be the west half of the northwest quarter of Section 12 (indicating).

Q. Would you put diagonal lines through that, through the west half?

(Witness draws on board.)

Q. Now, where was the closest quarter corner to that west half of the northwest there?

A. This one here (indicating). Right beside 12.

Q. And when you arrived at the property there, where had you found the quarter corner?

A. I found the stake over here, approximately 1,280 feet from the 16th corner.

Q. That would be east?

A. East of the quarter corner.

Q. Would you please indicate on there, if you will, where the property—where the west half of the northwest quarter of that section would have

(Testimony of C. O. Bergstrom.)

been if, in fact, the corner post belonged where you found it when you got out there?

A. That would be east to here (indicating).

Q. You put a dot in the center of that?

A. Yes.

Q. Do you know whose property the two forty-acre tracts is that you just indicated there with a dot?

A. This one here is the southeast of the northwest and belongs [1164] to Mrs. Anderson, and this one belongs to the Government (indicating).

Q. That is the Oregon-California——

A. Land grants.

Q. Land grants.

A. Or it may be public domain. I wouldn't know that.

Q. Referring to the actual property itself with the corner in the right place, was there any timber located on the property of Mr. Parker's, the west half of the northwest?

A. There was a small patch of trees right up in this corner here, the northeast corner of that property, but they may have logged it because they were logging when I was in there.

Q. Now, on what is actually the east half of the northwest quarter there, where is the timber located on the property?

A. The northeast of the northwest.

Q. Which is the——

A. This forty up here (indicating).

Q. The Government timber?

(Testimony of C. O. Bergstrom.)

A. That is Government forty.

Q. Is there any timber on the forty acres of Mrs. Anderson? A. No, that is logged.

Q. Have you any opinion as to the total amount of timber on the Anderson and Government forty-acre tracts?

A. There is nothing on the Anderson forty. That is logged.

Q. I see. How about the Government? [1165]

A. The other one, I have been through that a couple of times, and there is two million feet minimum.

Q. You may retake the stand, if you will, please.

(Witness resumes witness stand.)

Q. Now, you mentioned that the west half of the northwest quarter had been logged. Do you know when that was logged?

A. No, I don't rightly remember, but I think it was in '50.

Q. Who was doing the logging on it?

A. There was a man by the name of Hadley that was running a crew out there and had charge of the logging, and he said he was doing it for Lewellen in Washington.

Q. Did you ever talk to Mr. Lewellen?

A. No, I never have.

Q. Now, at the time you went out there and looked at those lines for Mr. Hewlett, do you have any opinion as to the value of the timber located on the west half of the northwest?

(Testimony of C. O. Bergstrom.)

A. No, I have not. I never cruised it.

Q. Well, was there any timber on it?

A. Well, it was all felled and bucked when I went up there to check those lines, all but the north-east corner.

Q. When was that?

A. That was when Lewellen, when Mr. Hadley was logging it.

Q. No, I am referring to the time when you went out there with Mr. Davis, Mr. Hirst and Mr. Smith.

A. Well, it was all logged at that time except that corner up there. I don't know about that because I didn't go up there. [1166]

Q. Would you have any idea as to the total number of feet? A. In the 80 acres?

Q. Yes. A. No, sir.

Q. Was that 80-acre tract worth \$35,000?

A. I couldn't say, but I would say not, but I wouldn't know for sure.

Mr. Buell: No further questions.

Cross-Examination

By Mr. Jaureguy:

Q. Did you know Chet Parker?

A. First time I have seen him.

Q. You do not know anything about him?

A. No.

Q. You do not have any idea who moved that corner? A. None whatever.

Q. That stake? A. None whatever.

(Testimony of C. O. Bergstrom.)

Q. You call it a stake?

A. It is an iron pipe with a brass cap.

Q. Do those caps have the bearing trees?

A. The bearing tree is usually quite a ways from the caps.

Q. Would any description of the property indicate where the bearing tree is?

A. No, that would be in the field notes at the court house. [1167]

Q. Any surveyor of any experience at all that went on the property, property like that, would he be deceived by the stake having been moved?

A. Not if he really looked for it.

Q. How did you know that it had been moved? Now, just give us your own experience.

A. Because I had been up there probably a dozen times before when it was in the right place.

Q. When was the last time you were up there when it was in the right place?

A. (Consulting notes): About '51, in June.

Q. About June, 1951, it was in the right place?

A. Yes.

Q. If you had not been up there before would you have been deceived by it?

A. No, I—well, if I had never been on the section I might have been for a little while.

Q. For a little while? A. Yes.

Q. And then how would you orient yourself to find out where you were?

A. Well, I would have checked from some other corner.

(Testimony of C. O. Bergstrom.)

Q. Would that be proper practice for a surveyor to do? A. Yes, sir.

Q. Which other corner do you generally look for? [1168]

A. Well, in this case I would have looked for the quarter on the north side of 12. When I find no bearing trees on a stake, why, I look for the next corner.

Q. Does the section corner have the bearing tree, too? A. They have four of them.

Q. So that a fair surveyor with any experience would have not been deceived any great length of time on it? A. No, that is right.

Mr. Jaureguy: That is all.

Mr. Lindsay: I have no questions. Would a person who had no surveying experience be likely to be deceived by that stake having been removed?

A. Yes, sir.

The Court: Any further questions?

Mr. Buell: Nothing further.

Examination

By the Court:

Q. When did you go up with Mr. Davis and these other people? A. June 29th of 1952.

Q. 1952? A. Yes.

Q. You had been up there in the summer of 1951 when the pipe or stake was in the proper place?

A. Yes, in June, 1951, and in June, 1950, was two times that I had been up there, but I had been

(Testimony of C. O. Bergstrom.)

up there probably three or four times besides that when the stake was in. [1169]

Q. You say that on the two forties, the northwest quarter of the section, there was only a small patch of timber on the northeast corner?

A. That is right.

Q. About how many thousand feet would there be?

A. Oh, I should judge there was probably twenty-five or thirty thousand.

Q. Well, that would not be worth twenty-five or thirty thousand dollars, would it?

A. Oh, no, no. Mr. Hadley didn't take it out because he said it was not worth while to go that far for that.

The Court: That is all.

Mr. Buell: I have one further question.

Q. Did you report the fact that the corner had been moved to the Government?

A. Yes, I was working over on Section 8 in the same township, and there was two Forest Service men come by, and we got to talking. I asked them what they done with the tag that is supposed to be on the road. They kind of laughed, said it was still there. I told them they had better go and look, and they went back and replaced the tag, but the iron post is still gone.

Mr. Jauregui: They replaced what, the tag, you say?

A. A yellow tag that they usually put alongside the road to tell how far it is to the corner.

(Testimony of C. O. Bergstrom.)

Q. What had happened at that place?

A. That had been moved with the iron stake down to where they [1170] put it and nailed on a tree down there.

Mr. Jaureguy: All right, that is all.

(Witness excused.) [1171]

RANDALL S. JONES

a witness produced in behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Jones, you are the Secretary of the McCormick Lumber and Manufacturing Company, are you? A. That is right.

Q. Were you subpoenaed to appear here and bring with you the check of the McCormick Lumber and Manufacturing Company, in the sum of \$5,300, payable to Walter Stegmann in payment for certain timber which the company had purchased from Mr. Stegmann in '51? A. I was.

Q. Will you hand that check to the—or, do you have the check with you? A. I do.

Q. Would you hand that to the Clerk, please.

(Check of McCormick Lumber and Manufacturing Company, No. 07266, May 14, 1951, marked Plaintiff's Exhibit 86 for identification.)

(Testimony of Randall S. Jones.)

Q. This is the check that you just handed to the Clerk; is that right? A. I didn't hear you.

Q. I say, this is the check that you just handed to the Clerk? A. Yes, it is. [1172]

Q. The one that was subpoenaed, which has now been marked as Exhibit 86, payable to Walter Stegmann in the sum of \$5,300, endorsed by Walter Stegmann and Lois Parker. I will ask counsel to have their clients examine the signatures to see if they are genuine.

Mr. Jaureguy: It is all right.

Mr. Buell: We will offer the check in evidence.

Mr. Jaureguy: No objection.

Mr. Ryan: No objection.

The Court: It may be admitted.

(Check previously marked Plaintiff's Exhibit 86 for identification was received in evidence.)

Mr. Buell: No further questions.

Mr. Jaureguy: No questions. Did I get the date of that?

The Court: May 14, 1951. Any further questions?

Mr. Jaureguy: No more.

The Court: That is all, Mr. Jones.

(Witness excused.) [1173]

* * *

Mr. Strayer: This Johnson transaction, your Honor, was the first time that they used this \$10,000 loan arrangement where the checks were written

by Mr. Stegmann and charged to Mr. Parker's account, and then about a week later the property was sold to the McCormick Lumber Company for \$5,300 paid. There are endorsements on the \$10,000 note and also on the \$22,000 note, about a \$2,300 payment.

Now, as I recall the testimony, I don't recall what Mr. Stegmann said, but I believe that Mrs. Parker testified that she recalled Mr. Stegmann had sold something and had paid \$2,300 on the price, but both of the Parkers disclaimed any connection with the Johnson tract of timber.

Now, we think it is material to show that they had some part in the preparation of the contract.

Mr. Jaureguy: Well, I cannot recall the testimony. Mrs. [1183] Parker tells me she testified just exactly what happened to that. She got that money and she applied it on an indebtedness and other things.

I will admit it is in her—that she typed it, if that is going to save anything, because I don't think it is material, and, furthermore, she thinks she did, and so I have not any objection to admitting that she typed that. [1184]

* * *

CHET L. PARKER

recalled, testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Parker, you were in court yesterday when Mr. Davis and Mr. Bergstrom testified concerning the west half of the northwest quarter of Section 12, Township 4 South, Range 6 West; were you not? A. I certainly was.

Q. And those 80 acres were owned by you?

A. When were they owned by me?

Q. When had you bought them?

A. I think sometime in 1950.

Q. You bought it from a gentlemen who lives out here in Milwaukie; did you not?

A. Man and wife, as I remember.

Q. What were their names?

A. I don't remember.

Q. Mr. LeRoy Moore; is that the name?

A. I think that was it, but I am not sure.

Q. How much did you pay for the 80 acres?

A. I paid cash for it, as I remember.

Q. How much was it?

A. I don't remember the amount that I paid for it.

Q. Well, you heard Mr. Buell's statement that it was \$5,000. Does that sound about right. [1204]

A. I heard his statement. I don't know where he got his authority; neither do I remember, but it is

(Testimony of Chet L. Parker.)

somewhere in there, I suppose. It was \$4,500, he said.

Q. That would be approximately correct according to your recollection? A. Yes.

Q. Now, did you log that property after you bought it? A. No, I did not.

Q. You took no logs off it at all?

A. No, I did not.

Q. Do you still own the property?

A. Yes.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. Well, you give your version of this option that was testified to yesterday.

A. Well, I didn't want to give an option on it to start in with. They wanted an option on it and I told them I didn't think there was any trees on this property, and then Mr. Wardell and Mr. Davis insisted that there was two million feet on it. I told them if there was two million feet on the property that I owned that I wanted \$35,000 for it. I told them, furthermore, I didn't want any dealings with them.

Q. Who were you speaking about? [1205]

A. Mr. Davis.

Q. Mr. Davis?

A. And I have not changed my mind now, either.

(Testimony of Chet L. Parker.)

Q. What about the consideration for that option?

A. I told them they could have it for nothing.

Q. And the first option, did they get that for nothing?

A. Yes, they had to put some amount in it. I said, "I don't want any of your money." So they said, "We will put it in anyway and not pay you then." I said, "That is fine with me."

Q. What about when the renewal came up?

A. I said, "You can have the extension. It won't cost you a penny." I still haven't changed my mind. The man I sold it to was supposed to leave the back forty. He was not supposed to log the back forty, so there could be any amount on it, but I told him absolutely I don't think there was two million feet of timber on it. They told me there was. I said, "If there is two million feet of timber on it, then I want \$35,000 for it," is what I told them.

Q. Did you know at any time they were talking about here that that quarter corner marker had been moved?

A. I had not been up there from the time I was there with the man I logged it for to now. I have never been to those corners since then.

Q. Did you ever know or had heard that it had been moved?

A. No, I don't think it was. [1206]

Q. You mean when the surveyor went up there that he——

A. Well, I wasn't with him. I can't testify it

(Testimony of Chet L. Parker.)

was or wasn't, but I don't believe it was. No one else ever seems to ever think it was. There is a fence line there. There is a fence separating the properties, and you would have to move the fence separating the boundary line. It is ridiculous and impossible. A six-foot bearing tree bears the corners out. I am certain even though I have not been there that that six-foot tree has not been moved. Everyone knows who owns property there everywhere.

Q. At any rate, you did not have any knowledge of any marker being moved?

A. Absolutely, and none of my properties at any time.

Mr. Jaureguy: That is all.

Q. (By Mr. Ryan): Did Mr. Stegmann have anything to do with showing these properties to these people that you know of?

A. Not on my request or anything I had to do with it.

Mr. Ryan: That is all, your Honor.

The Court: Mr. Lindsay or Mr. Krause?

Mr. Krause: I have nothing.

Redirect Examination

By Mr. Strayer:

Q. If Mr. Stegmann showed it to Mr. Wardell, you had nothing to do with it?

A. Absolutely I did not tell him to show it or have anything to do with it. [1207]

(Testimony of Chet L. Parker.)

Q. How did it happen you talked with Wardell about it?

A. Mr. Wardell called up and wanted to buy my property.

Q. He was the one, then, that told you there was two million feet on it?

A. Well, he or Davis, I don't know which one.

Q. How many feet did you think were on it?

A. I didn't think about it either one way or the other. There was snags on the back part of it, and there could be a million feet if a man didn't take them. There couldn't—I didn't think there was two million feet, and I told them so.

Q. Did you believe there was about a million feet?

A. Well, that is purely speculative. I don't know. I never paid much attention. The grown timber was on a piece adjacent to the road and that potential was what I was interested in when I purchased it.

Q. Did you say that you logged that for somebody?

A. No, I did not log it.

Q. What was your statement a minute ago?

A. My statement was that I didn't log it.

Q. No, I mean when Mr. Jaureguy asked you a question, you said something about the man that you logged it for.

A. No, the man that logged it, I sold it to a man, standing in trees, standing up, all the merchantable lying, standing, and being on the property. [1208]

(Testimony of Chet L. Parker.)

Examination by the Court

Q. When was that, Mr. Parker?

A. I don't remember. In 1950 or 1951.

Q. Was that before Wardell showed it to Davis?

A. Well, I presume, I don't know when he showed it to him, but it was before this monkey business come up here.

Q. In other words, you had originally purchased this property for \$5,000, and at the time you purchased it, it had a considerable amount of timber on it, is that correct?

A. That is right.

Q. And then you sold the timber to someone else? Who was that party?

A. Mr. Madden.

Q. You sold him the timber that was standing and also the timber that was cut and lying on the ground; is that right?

A. Well, your Honor, there wasn't any cut.

Q. Well, what did you—you used a phrase here a minute ago about all standing and other timber?

A. Yes, you know, windfalls and stuff.

Q. So you sold that to Mr. Madden?

A. I think that was his name.

Q. Do you know how much you realized from that sale?

A. I think it was \$7,000.

Q. Now, after that, this transaction which you have called monkey business came up between Mr. Wardell and Mr. Davis. At [1209] that time is it your testimony that you told Davis that there was not two million feet of timber, or anything like that?

A. That is right.

(Testimony of Chet L. Parker.)

Q. And you knew that because of the fact that it had been logged?

A. Well, the back forty, Madden said he was not going to log the back forty, and I had not been on there since then.

Q. Was there any timber on that front forty?

A. Oh, yes, yes, it was thickly, green timber.

Q. Now, when you originally purchased it, didn't you cruise it yourself?

A. No, but I walked through it.

Q. How many feet of timber was on the two forties at the time that you walked through it?

A. I figured there was about a million and three-quarters of green timber. Whatever I guessed would be on that back forty. They were very big, however, on the back forty.

Q. One million and——

A. Three-quarters.

Q. What did you sell this timber, the stumpage, for?

A. At that time I sold it for—on the front forty, seven thousand, I think it was. It may have been eight. I am not sure about that.

Q. Did you charge them by the thousand, or did you charge them for the whole tract?

A. No, all of the timber. [1210]

Q. How long had Madden been up there logging?

A. I really don't know.

Q. But he had moved his equipment off by this time?

(Testimony of Chet L. Parker.)

A. Oh, yes, I think so. I had not been up there, but I think he had moved it off.

Q. So when Wardell came to you, and Davis, you had very little doubt that was little or no timber left on these tracts?

A. I figured probably the snags had possibly a million feet in them.

Q. The snags had a million feet?

A. Possibly, yes. There was approximately several hundred snags, they were big ones.

Q. But that wouldn't be worth any thirty-five thousand, or even seventeen, would it?

A. Well, possibly seventeen. I told them it wasn't worth it, and I didn't want to have anything to do with them.

Q. Didn't you suspect that they might be logging at the wrong timber?

A. I asked them, absolutely, I even suggested to them that they might be. That is why I didn't want anything for the option. I didn't want to hurt anybody.

Q. You didn't want anything for the option, and you didn't want to take the \$500?

A. I did not, absolutely.

Q. After they came back and told you that the stake had been [1211] moved and they didn't want to go through with the option, did you return the money to them?

A. They didn't come back and tell me until after I got the money.

Q. Yes?

(Testimony of Chet L. Parker.)

A. And then they said—well, I don't remember, they told me the stake was moved—I didn't refuse to return the money.

Q. Well, did you return the money?

A. No, no, I was—I thought they was trying to put a crooked deal over and I——

Q. You mean you did not think there was any timber on the ground, you thought the \$35,000 was greatly excessive, and then when they didn't go through with the deal you thought they were trying to pull something crooked on you?

A. I still think so.

Mr. Jaureguy: In what respect were they crooked in that, Mr. Parker?

A. Because I absolutely told them that I didn't think there was that much timber on it, and it was not worth it, and I didn't want anything to do with it.

Q. I mean, how was that your deal on that?

A. Well, I had a million feet of snags back there, and I didn't like the looks of this Davis, and I didn't want to deal with him.

Q. I didn't understand whether Wardell was in on the first option or just the extension. [1212]

A. I don't remember whether he was or was not.

Mr. Jaureguy: That is all.

(Testimony of Chet L. Parker.)

Redirect Examination

By Mr. Strayer:

Q. Did I understand that you sold only timber on the front forty to Madden?

A. Well, that was what he said all he was interested in was the green timber.

Q. There was nothing but snags on the back forty. How did that come?

A. Well, it was probably a hundred and fifty or two hundred thousand feet of green timber, I guess, next to the north line, I think it was.

Q. Did Madden have the right to cut the back forty if he wanted to?

A. He was not going to, he said.

Q. Did the contract cover both forties?

A. Well, I don't remember.

Q. Do you know why he didn't cut the back forty?

A. Well, it was snags. We had a bad year in there. We couldn't sell no timber hardly. When he bought it, it was a bad year, the market was not——

Q. That was 1951, wasn't it?

A. I think in 1950.

Q. You didn't buy it yourself in 1950, [1213] December?

A. I think I sold it in the winter of 1950.

Q. You think there was a fence between there and the government land?

A. There is a fence, as I remember, that is bor-

(Testimony of Chet L. Parker.)

dering between my property and another old fellow that lives up—well, the Stegmann property now, I guess it is. There is a fence with posts about 12 feet apart on the line, or it looks like it is on the line, anyway.

Q. Between your property and Stegmann's?

A. Yes, and then there is—there was a cut running—oh, there is a cabin, also on the property to the east of my property is a cabin, a log cabin, also.

Q. That would be on the government land?

A. No, no.

Q. Where is the Stegmann land with reference to the north or south, east or west?

A. West, and there is a fence line between us.

Q. But the government land is east of your, is it not?

A. Well, it is east—I think it is government, I am not sure, east of the northwest of the northwest, Section 12-4-6.

Q. There is no fence between you and the government land, is there?

A. No, no. There is a rock cliff between I and the government property, terrible rock cliff.

Mr. Strayer: That is all. [1214]

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Krause:

Q. Who drew the option, the original option?

A. I think Mr.—Attorney Crow at McMinnville drew it.

(Testimony of Chet L. Parker.)

Q. Your attorney? A. Well, yes.

Q. You paid him for drawing the option?

A. As I remember, I did.

Q. And the extension of the option, who drew that?

A. I think he did. They came back to the attorney.

Q. Well, you had to go there to sign it, though, didn't you?

A. No; no, I didn't go there to sign it.

Q. They brought the option to you?

A. Yes.

Q. After Mr. Crow had written the extension of the option?

A. Well, as I remember it, Mr. Crow called me at my house and said these people wanted an extension. I said, "Okay, give them an extension and forget about it." But no, they insisted I take \$500 for it, so they appeared at my house at Vancouver with a \$500 check, and then again I didn't want to take their money, so finally after a while people keep twisting your arm, why, you take their money and forget about it.

Q. And, of course, besides bringing the five hundred over to you, they brought over this extension of the option which you [1215] signed?

A. Well, I think it was extension of an option, whatever it was.

Mr. Krause: That is all.

Mr. Jaureguy: That is all.

The Court: That is all, Mr. Parker. [1216]

Defendant's Case

JOHN BLEDSOE

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is John Bledsoe? A. Yes.

Q. You live in Portland? A. Yes.

Q. What is your occupation or profession?

A. Lawyer.

Q. You have been admitted to the Bar in Oregon how long? A. Five years.

Q. With what law firm are you connected?

A. Koerner, Young, McCulloch & Dezendorf.

Q. You have been with that law firm how long?

A. Five years.

Q. Is the Multnomah Plywood Corporation a client of that firm? A. Yes.

Q. Was it a client during the year 1951?

A. Yes.

Q. Have you ever met Mr. and Mrs. Chet Parker? A. Yes. [1226]

Q. Did you ever meet them in connection with any deal or proposed sale from the Parkers to the Multnomah Plywood Corporation? A. Yes.

Q. At that time, in connection with that, were you representing the Multnomah Plywood Corporation? A. Yes.

Q. Was anybody else with them? A. Yes.

(Testimony of John Bledsoe.)

Q. Who was that?

A. Mr. Clyde Smith, Multnomah Plywood Corporation.

Q. Do you know what position he held with the Multnomah Plywood Corporation at that time?

A. I do not know the exact title, but he was engaged in assisting in buying of logs and timber and cruising timber for Multnomah Plywood Corporation.

Q. Could you tell me when it was that meeting took place?

A. It was August 24, 1951, in the morning.

Q. Now, will you just tell us what the discussion was?

A. Well, Clyde Smith called me and asked me to sit in with him and Mr. and Mrs. Parker on working out a couple of details, one of these which involved a sale that the Parkers had previously made to Multnomah Plywood Corporation, and on a contract for a sale of timber, and, as I recollect it, we arranged for a payment and mortgage and the closing of that transaction. We also [1227] discussed the proposed purchase of property which was designated the Lost Lake property.

The purchase price mentioned for the Lost Lake property was, to the best of my recollection, \$180,000. The financing was to be arranged by the mortgaging of some property of Multnomah Plywood's in Southern Oregon.

Q. Was that a different tract that the——

(Testimony of John Bledsoe.)

A. A different tract than the other.

Q. Than either of these other two that you have mentioned?

A. Yes, I can't say exactly what that tract was, but that was mentioned as a possibility for financing it, and I was asked to complete the former transaction to which I referred, that is, the property sold on contract, and to prepare papers for setting up a sale of the Lost Lake property.

Q. Was that first tract, was that known as the Bear Creek tract?

A. I think that is correct.

Then after reaching this tentative agreement, it being understood, of course, that the deal was being made subject to the approval of Multnomah Plywood Corporation, Mr. and Mrs. Parker and Smith left.

Q. Can you recall any more of the terms other than there was to be a mortgage on some property and that the total consideration was \$180,000?

A. Well, it seems to me that the mortgage on the other property was to be \$60,000, which was to be the down payment on the Lost [1228] Lake property, but those are the only terms that I can recollect.

Q. Would you recall this, that there was \$42,000 due on the Bear Creek, but they were willing to let that apply on the purchase price of Lost Lake?

A. My recollection is that there was a little more than that. There was about \$43,000 due on the Bear Creek portion, but I don't recall that——

(Testimony of John Bledsoe.)

Q. And then that that was to be part of the first payment?

A. Well, this money was due to the Parkers from Multnomah Plywood Corporation.

Q. On the Bear Creek transaction?

A. On the Bear Creek, yes, and I do not recall that money due them there being applied on the Lost Creek (sic) sale.

Q. At any rate, you say there was to be a down payment of somewhere around \$60,000?

A. Well, as I recollect it, there was to be no cash transfer, but we were to clean up the Bear Creek property and to secure the payment of, upon the Lost Lake property, and there was to be an additional sixty thousand or so mortgage on some property in Southern Oregon, and the note being given on it being, in effect a down payment.

Q. Do you recall the terms for the payment of the balance beyond the sixty thousand?

A. I remember our discussing, though I can't remember the terms except that they were to be tied in some way with the logging [1229] of the timber.

Q. Now, when these three people came in to see you, did they seem to have already reached an agreement, or was it negotiated in your office?

A. I should say it was negotiated in our office.

Q. Well, did they seem to have any general——

A. They had general ideas, yes.

Q. ——of what the terms were to be?

A. Yes, what the property was worth.

Q. And in general the terms and the details were

(Testimony of John Bledsoe.)

negotiated; was that it, or would you say that more than that was negotiated?

A. I would say just the terms were negotiated. They had in mind what the respective properties were worth, and it was a matter of working out the technique of effecting this change.

Q. Now, you say that the contract that you drew up was to be subject to the approval of Multnomah Plywood? A. Yes, that was.

Q. Were you to submit the contract to both attorneys, or to one party first and then the other?

A. I was, I recollect I was to submit it to both attorneys.

Q. You were not to submit it to Parkers first and get their approval first?

A. I don't recall that.

Q. All right, then, what happened after that?

A. Well, the 24th was on Friday. On Monday I prepared papers [1230] effecting the completion, winding up of the other property transaction, and advised—transmitted them to the Parkers and sent in a letter to the Multnomah Plywood Corporation and advised them that the Lost Lake property papers would be prepared in due course when I could get to it. I spent some time in preparation of those Lost Lake papers, but I don't recall their ever being put in final form.

Mr. Johnson, the president of Multnomah Plywood Corporation, came to our office, I should say probably within a week or within two weeks after this occurrence, and, among other things, told me

(Testimony of John Bledsoe.)

that the transaction was off; that Multnomah Ply-wood was not interested in going through with it.

Q. Did he indicate whether that was final or whether there might be some further negotiations?

A. I got the impression it was definitely final.

Q. Now, I do not understand whether you have any different recollection as to whether you prepared a tentative contract or paper of some kind on the Lost Lake property.

A. I have a definite recollection that I expended effort towards that end, and my record of my time spent during that time would indicate that I spent some time working towards that. I do not recall putting the deed in final form.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: No questions, Mr. Bledsoe.

Mr. Krause: I have none. [1231]

Cross-Examination

By Mr. Buell:

Q. Mr. Bledsoe, you rather definitely fix the date of August 24th. Is that by refreshing your memory from a calendar or an appointment book?

A. Yes, in my date book I remembered a meeting, and I refreshed my memory by looking in it, and I noted that I wrote at that date that they were there about 11:30 on the morning of the 24th.

Q. When Mr. Johnson called the deal off, did he say that the property was not—or the timber was not worth what they were asking for?

A. Mr. Johnson did not say that was the reason.

(Testimony of John Bledsoe.)

I got the impression that he did not think it was, and he made the additional statement at the time that the company was not so hard up that they would have to mortgage that Southern Oregon property to put through a deal if they wanted to.

Q. Was Multnomah Plywood having some financial difficulty along about that time?

A. Not to my knowledge.

Q. Were they having any particular difficulties keeping an adequate supply of logs or obtaining logs?

A. I have no specific recollection on that. I think that—I think they were interested in getting more logs at that time.

Q. The primary purpose of the meeting was to work out the details [1232] for closing the Bear Creek transaction; was it not?

A. Well, it was to discuss both.

Q. But the Bear Creek deal was coming up, the balance was coming due to the Parkers, and some disposition had to be made of that, didn't it?

A. Yes, it was disposed at that meeting.

Q. And that Bear Creek, that timber was down near the Nestucca River, wasn't it, or would you know about that?

A. I can't say.

Q. Did Mr. Parker, while he was in your office there, say anything about Mr. Walter Stegmann being interested in this Lost Lake property?

A. No.

Q. Did you ever hear the name Walter Stegmann before this lawsuit?

A. No.

(Testimony of John Bledsoe.)

Q. Insofar as the agreement as to such, or a meeting of the minds of the parties or an agreement, is it your testimony—you said that it was definitely understood that whatever was worked out was subject to the final approval of Multnomah Plywood. Is that a fair statement?

A. I think that is correct.

Q. And was it the kind of a situation where the Multnomah wanted to have the Parkers reduce their proposal of terms on which they would sell the property to Multnomah but retain a final form, [1233] and then Multnomah would act on it and accept it or reject it as they saw fit?

A. Well, I should not say it was exactly like that. I think it was more like this. Clyde Smith, being an employee of the corporation, when a person purports to act for a corporation he has to have either corporate authority given him in advance or the action confirmed, but as far as Smith and the Parkers were concerned, agreement was reached in my office, but Smith was not authorized to complete the deal for Multnomah at that time.

Q. Mr. Bledsoe, I am handing you what has been marked for identification Exhibit 117, which is a certified copy of the minutes of the Board of Directors of Multnomah, on August 20, 1951. I wonder if you would run through that quickly and see if that refreshes your memory at all as to whether or not this mortgage on the Southern Oregon timber was to secure the Lost Lake timber if Multnomah bought

(Testimony of John Bledsoe.)

it, or whether it was to secure the balance on the Bear Creek timber?

A. No, I don't remember. In fact, I am a little surprised at this resolution being dated before the meeting.

Q. I take it, then, that is the first time you have ever seen that portion of the minutes?

A. Yes, it is.

Q. No further questions.

Redirect Examination

By Mr. Jaureguy:

Q. I think you referred to that as a resolution. I don't think [1234] there is any resolution there, is there, Mr. Bledsoe?

A. No, minutes of the meeting.

Q. Just the minutes of the meeting?

The Court: I do not think that is important.

Mr. Jaureguy: No, it isn't, and I just wanted, in case later on somebody looked at it and thought it was the wrong exhibit there.

That is all at this time.

Mr. Buell: No questions.

Mr. Jaureguy: That is all.

The Court: That is all. You are excused, Mr. Bledsoe.

(Witness excused.) [1235]

LINCOLN S. FERRIS

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Mr. Ferris, you live in Portland?

A. I live in a suburb of Portland in Multnomah County.

Q. You are a practicing attorney in this city?

A. I maintain an office in the Failing Building, and have for somewhat over five years, six years prior to that in the Corbett Building.

Q. Have you been practicing law in Oregon, how long?

A. It will have been 18 years. In May, 1935, I was admitted to the Oregon Bar.

Q. Do you know Mr. and Mrs. Chet Parker?

A. I do.

Q. You have known them how long?

A. It would be my belief that I have known the Parkers for between six and seven years.

Q. Have you ever done any professional services for them? A. I have.

Q. Do you recall on one occasion their mentioning to you some question in their own minds about a title policy? A. I do.

Q. Could you tell us about it? Could you tell us when that was? [1236]

A. I have looked up my office records in order to fix the date and supply it to you. As I recall, it was

(Testimony of Lincoln S. Ferris.)

the 29th of August, 1951. At that time the Parkers had been to see me perhaps twice a year for several years for various things, most of them of a rather minor nature, and they came in on that day for an office inquiry without any previous appointment. I have thought hard to try to think what the burden of their inquiry was. I can tell you that it was one of three things, probably. I had handled a sale of heavy equipment to some people named Alcorn down near Alsea sometime prior, and in January of 1951 I had been hospitalized, extremely ill, and during that time they had come to see me regarding the purchase of some, I believe, electric unit in Camas, Washington, and at my secretary's request they took that inquiry to Mr. Samuel H. Martin. I did not have to do with its consummation, and they also had had some small question of some sort regarding, I believe, timber in Cowlitz County, Washington, on either one of those three things, or their personal question of whether or not to set up a trust fund for their son, I believe, would have been what Mrs. Parker came to ask me about, and during this—I might say that the charge I made was for the office, cash charge, of a comparatively unimportant sort.

My belief is that that Alcorn sale did pan out and that the buyer bought, and they, of course, conveyed. They could very well have been asking about policing that contract. It was [1237] some thousands of dollars of heavy equipment.

Now, our relationship had been a very cordial one personally. They have flattered me by asking me at

(Testimony of Lincoln S. Ferris.)

one time my advice as to a tutor for their son who, I believe, was having trouble with his school work. I suggested, I remember, or meant to suggest the name of Mr. Price Burlingame. So I asked Mr. Parker, as I recall, intending to be cordial, and it was fully beside what we had been discussing what he had been doing to keep busy, because I understood he had sold his interests in Yamhill County or around McMinnville and I thought that might be an amusing observation. In the same conversation he said, "Well, I—" something like this, "Well, I have right now, would have a chance which I will lose to make a desirable sale." It was either near The Dalles or near Hood River. I don't know where it was. It was in the Cascades in the upper Columbia area. He said, "But I understand I cannot get title insurance because I have made only a small down payment." And I think he said, "I have only an option to buy." I said, simply making an observation as I suppose anyone in our work would, "That does not sound right. Have you positive information that you cannot get such insurance?" I believe he said, "No, I haven't." I said, "Well, if you wish me to I will make inquiry about it. I am frequently with Mr. Allison at the Commonwealth, and Mr. Dwyer at The Title and Trust." So I telephoned Mr. Dwyer and I have a very distinct recollection of that telephone conversation [1238] because not long before that, in a thumb-nail sketch of his life, the Daily Journal of Commerce had said that

(Testimony of Lincoln S. Ferris.)

he had just been promoted and that he had started in as an office boy, sweeping out, perhaps 40 years before that, and had worked there, I believe, his entire working career. And again, in my own intention to be genial, I called him and made some bantering observation regarding his having been successful and then I asked him "Is it true that a person who has"—well, I won't attempt to recall at this time my exact words, but I attempted to frame to him the question that Mr. Parker had put to me, or at least that I had inferred he was asking when he said he couldn't get title insurance. I would have no idea other than that Mr. Dwyer gave me to believe the contrary.

I took from the Parkers, or from Mr. Parker, I am quite sure the business they had come in on was something Mrs. Parker had asked me about. That is my recollection, but I can't remember exactly and I cannot remember how he had this impression. All I can remember is that I did call Mr. Dwyer, spoke to him personally, and incidentally, I earnestly hope I have not injured him because I like him very much.

The Court: Well, did Mr. Dwyer give you—did he tell you that they could get the title policy even though they had not paid the full purchase price?

The Witness: I have tried to remember Mr. Dwyer's answer and I believe it was "I think that that is misinformation. If [1239] you will bring me the data, I will look into that, and I assume that we could write the policy."

(Testimony of Lincoln S. Ferris.)

Now, that would be my best recollection of what Edwin Dwyer said to me on the telephone.

The Court: Any further questions?

Mr. Jaureguy: Then did you convey that information to the Parkers?

A. I did immediately, and I said, "If you have anything on this that they would need for their research on that, if you will give it to me I will get it down to them." And I find that I charged for that service an errand-boy fee of \$5.00. That is all I had to do with it.

Q. That was paid? A. Oh, at once.

Mr. Jaureguy: You may take the witness.

The Court: Mr. Ryan?

Mr. Ryan: No questions.

Mr. Krause: I have none.

Cross-Examination

By Mr. Strayer:

Q. What do you mean by "errand-boy fee"? Do you mean you were calling Mr. Dwyer, is that what you mean?

A. Yes, Mr. Strayer, I mean simply that I felt that I was not, I did not consider anything here except—I felt that I was not engaged to draft any contract or I know that I didn't dictate [1240] any letter. I did not even make a page in the ledger for the charge.

Q. I understand.

A. I felt that I was simply engaged to transmit to Title and Trust Company, I think probably Miss

(Testimony of Lincoln S. Ferris.)

Helen Hossack, I am not sure, a couple of memoranda that they left with me. I did not even look at them.

Q. Did the Parkers leave something with you which you sent over to Title and Trust Company?

A. I believe that is so, Mr. Strayer.

Q. Do you know what the papers were?

A. No, I do not.

Q. Did you take them down yourself?

A. I think I did. I am often in there.

Q. Do you remember to whom you gave them?

A. Either Edwin Dwyer or his secretary, or Miss Helen Hossack at the counter.

Q. But you have no recollection of what those papers were?

A. No, I do not. In fact, I doubt if I even inspected them, Mr. Strayer.

Q. Were both Mr. and Mrs. Parker in your office, Mr. Ferris?

A. They were.

Q. But Mr. Parker was doing most of the talking as I understand it?

A. Yes regarding this other matter which would be one of four [1241] that I mentioned. I am positive of that.

Q. Which one of them brought up this matter of the title insurance problem, do you know?

A. Mr. Strayer, I have related how I think it came up, and I repeat that I believe it was because I asked Mr. Parker if he was doing anything to keep busy, and he responded, as I recall, something like that, "Well, yes, as a matter of fact, right now

(Testimony of Lincoln S. Ferris.)

I could make a desirable deal on some timber if I could get title insurance." I think it was like that.

Q. Did he indicate to you that he was having difficulty getting title insurance?

A. I had no such impression no. As I say, I have wracked my brain to think if he said to me how the matter got—why he felt that, and I do not know.

Q. Did he tell you that he had an option on the timber?

A. I am almost positive, I can remember he said, "I have made a very small down payment and have an option to buy."

Q. Did he show you the option, as you recall?

A. If he showed it to me, I did not look at it.

Q. Well, that would not have been one of the papers you sent down to the title company, then?

A. The only receipt I gave them I brought to court, and it must have been——

Mr. Jaureguy: Oh, yes; here it is. I didn't even look at it. [1242]

Mr. Strayer: May I look at it?

Mr. Jaureguy: Yes.

The Witness: Mr. Strayer, I do not even know what this lawsuit is about. I have never been consulted about it.

The Court: You are not being criticized at all, Mr. Ferris, and you are not a litigant here. You are just a witness, and nobody is criticizing you.

The Witness: Thank you, your Honor.

Mr. Jaureguy: I would like to have permission

(Testimony of Lincoln S. Ferris.)

to put a document in for which I do not have a pre-trial number.

The Court: That is all right.

Mr. Jaureguy: I think it would be about 119.

(Receipt dated August 29, 1951, to Chester L. Parker from Boyd, Ferris and Erwin, marked Defendant Parker's Exhibit 119 for identification.)

Mr. Jaureguy: That purports to be a receipt dated the 29th of August, 1951, signed by Boyd, Ferris & Erwin by L. F., "Option, Paul and Ethel Winans, HR, Title and Trust Co. receipt, HR Title and Trust Co. report, order number HR 12987."

The Court: Any objection?

Mr. Krause: No.

Mr. Ryan: No.

Mr. Strayer: No.

The Court: It may be admitted.

(Receipt previously marked Defendants Parkers [1243] Exhibit 119 for identification was received in evidence.)

Mr. Strayer: Do I understand, Mr. Ferris, that this was a receipt issued by you to the Parkers at the time they left the papers with you?

A. The Parkers, oh, yes, that is in my own handwriting. Although I have not looked at it, I asked my secretary to look it up and she handed it to me when I came to court this morning.

Q. (By Mr. Strayer): How was the receipt in your files? I don't understand.

(Testimony of Lincoln S. Ferris.)

A. How was the receipt in my files? Because after I got through with the transaction, I wanted to be sure that I was not charged with any papers that I no longer had.

Q. In other words, you returned the papers to the Parkers and they returned your receipt; is that the idea?

A. Very likely so, Mr. Strayer. I cannot be positive. That would be my ordinary practice.

Q. All right. Now, the receipt indicates that the papers which you had were, among other things, the option, and, I believe that title report, were they?

A. A receipt from the title company for the report charge.

Q. My question is, did you note that the option did not run to Mr. Parker but it ran to Mr. Walter Stegmann?

A. I did not, no, sir.

Q. Did the report—— [1244]

A. Mr. Strayer, you will verify the observation that if I had done any study on this case I would have regarded myself as a lawyer in the matter and have made a charge accordingly. I did not examine the papers.

Q. I am just trying to find out what information you did have.

A. I categorically say I did not examine the papers or study any drawn up connected with them.

Q. So I take it, then, the name of Mr. Stegmann was not mentioned?

A. Now, just a minute, Mr. Strayer, please. I

(Testimony of Lincoln S. Ferris.)

don't remember that it was. I had heard the name of Mr. Stegmann before in connection with a case in Frank Day's District Court in a suit where Mr. Parker was a witness for me, and on that occasion there was mention that I might be able to get some expert, and the amount involved was too small to bother with, but somewhere, either in that case where he was my witness, or somewhere else. I remember this morning hearing the name. I believe somebody was asked if he had ever heard the name. I would have to say yes, I had heard the name, so I would have to answer your question, Mr. Strayer, I don't know whether it was mentioned or not.

Q. Mr. Ferris, did the parkers make any mention to you of a defect in the title?

A. No, sir.

Q. Did they make any mention to you of the fact that it was school lands? [1245]

A. That it was what, Mr. Strayer?

Q. School lands, or that it had been sold——

A. Not that I recall. I doubt it very much.

Q. In other words, then, you did not get the impression from them that they were concerned at all about the title of the property? They were merely concerned about the mechanical problem of getting the title insurance?

A. Yes, that would be a fair assertion. That was certainly the burden of my understanding.

Q. You merely called Mr. Dwyer to find out whether title insurance could be purchased by them

(Testimony of Lincoln S. Ferris.)

in advance of actually getting the deed to the property? A. That would be correct.

Q. And he suggested that you send the papers down to him, and he would look it over, but no doubt it could be taken care of?

A. That is my best recollection, Mr. Strayer, yes.

Mr. Strayer: I think that is all.

Mr. Jaureguy: That is all.

Q. (By Mr. Strayer): How do you happen to recall, Mr. Ferris, that you suggested to Mr. Parker that he also take in an assignment of the option? To refresh your memory now, the option ran to a man by the name of Walter Stegmann, and there was an assignment of that option from Stegmann to Parker. Apparently the assignment was not given to you, but do you recall suggesting to Mr. Parker that an assignment should also be taken in to the [1246] title company?

A. In honesty, I would have to say I don't remember.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: Nothing.

The Court: That is all. Thank you, Mr. Ferris. You are excused from further attendance at the trial.

(Witness excused.)

The Court: Recess until two o'clock.

(Noon recess taken.) [1247]

Mr. Strayer: The next I have is Exhibits 21, 22, 23 and 24 which are the depositions of Mr. and Mrs. Parker, Walter Stegmann, and Mr. Paul Winans which are offered by the plaintiff as admissions against interest—25 instead of 24.

The Court: Are there any objections?

Mr. Jaureguy: We object to the introduction of Winans' and Stegmann's depositions on the ground that they are present in court and are willing, able, and desirous, I think, to testify.

The Court: Well, they already have testified.

Mr. Jaureguy: Yes, well, they already have testified.

Mr. Krause: Well, in any event, your Honor, we object to the introduction of these depositions excepting certain portions as where called to the attention of the parties during the trial. [1252]

The Court: I think I have already indicated that I was under the impression that was the rule, but I have subsequently come to the conclusion that the deposition of a party is admissible for any purpose. sition of Parker against Parker and the deposition of a party is admissible against the party but not against other parties.

Mr. Strayer: That is correct.

The Court: Yes, but they have offered the deposition of Parker against Parker and the deposition of Stegmann against Stegmann, and the same thing is true with the Winans deposition.

Mr. Jaureguy: My objection was just a little super-cautious, then, because I wanted to be sure it was not going to be considered anyhow, I mean,

the other two depositions would not be considered against Parker.

The Court: That is right.

Mr. Buell: That is the intent of our offer.

The Court: There is no question about that, Mr. Jaureguy. It is not to be used as substantive evidence against other parties, only used for the purpose of impeachment.

Mr. Jaureguy: Then I renew my objection because you cannot impeach a party—I don't know whether I should be talking about their inability to impeach these two people, anyway, and maybe I should sit down.

Mr. Strayer: If I may interrupt here, they are not offered for impeachment; they are offered as admissions against interest [1253] of a party. [1254]

* * *

Mr. Strayer: We offer Exhibit 30, which is the contract between Mr. Stegmann and Mr. Walker.

Mr. Jaureguy: Is that the same transaction?

Mr. Strayer: No, that is another one on Hood River. Stegmann-Walker transaction. That had nothing to do with the checking arrangement. That is where he took a contract from Walker and sold the timber to the Walton Lumber Company.

Mr. Jaureguy: I object to that on the basis as far as the Parkers are concerned it is purely hearsay, not in any way binding upon them.

Mr. Ryan: I object to it as far as the defendant Stegmann is concerned. It is irrelevant to the issues of this case.

The Court: I wonder if you would remind me about that transaction?

Mr. Strayer: That transaction, your Honor, of course, as you understand, we are trying to get as many of these transactions as we could find where Stegmann and Parker had been involved in some manner or other, and the testimony on the Walker timber and decided he did not want it, and Mr. Stegmann then sold it to the Walton Lumber Company, and the testimony was that he was to pay Mr. Walker for the payment he had not paid until he said he thought his wife had recently paid Mr. Walker. It is [1257] just a part of the picture of timber transactions where both Stegmann and Parker appeared on one capacity or another.

The Court: It looks remote to me under any circumstances, and I do not understand how you can draw any inferences favorable to the plaintiff from that transaction. Any inferences that might be drawn, it would seem to me, should be made in favor of the Parkers on that one.

Mr. Strayer: I will agree, your Honor, that it is not as strong as some of the others, but it does have this significance. Mr. Stegmann got up to Hood River early in the spring of 1951, we believe, as a sort of a scout looking for timber for Mr. Parker. Now, he gets a contract on Mr. Walker's timber which requires no outlay of money. Mr. Parker looks the timber over, decides he does not want it, and so it is disposed of elsewhere, just merely a little link in this series of timber contractions.

The Court: I do not think it is worth very much, but I am going to admit it for what it may be worth.

(Exhibit 30 received.)

Mr. Strayer: I now offer Exhibit 31, which has been identified by Mr. Stegmann as a contract between himself and the Arthurs. This was related to the Gopher Valley transaction.

Mr. Jaureguy: Object to that in behalf of the Parkers. We object to it on the ground that it is incompetent, irrelevant and immaterial and also that it is purely hearsay.

The Court: I thought this was the contract between Parkers and Stegmann? [1258]

Mr. Jaureguy: No.

Mr. Buell: That contract was assigned by Stegmann to Parker, according to one of the exhibits.

Mr. Strayer: The Gopher Valley transaction started out with this contract between Stegmann and the Arthurs. Then there has been a lot of testimony here about how Parker became involved in this particular contract. First out he took a first mortgage on the interest that Mr. Stegmann had in the timber. Then they made a contract with Mr. Rutherford whereby he was to log the timber.

The Court: Is this the timber that burned?

Mr. Strayer: This is the timber that burned, yes.

The Court: Objection overruled. It may be admitted.

(Document, logging agreement, previously marked Plaintiff's Exhibit 31 for identification, was received in evidence.)

Mr. Strayer: Next is Exhibit 47, which consists of checks of Chet and Lois Parker on the First National Bank of McMinnville. I believe Mr. Jaureguy has those checks, and also the deposit slips they were able to find, which, I believe, should be marked as 47-A. Your Honor will recall that we asked permission to have a ledger made up of those checks. We have a ledger of the checks and the deposit slips as a part of that exhibit.

Mr. Jaureguy: You mean the checks are all marked 47?

Mr. Strayer: That was my understanding of it. At least, [1259] that was what was reserved for them.

Mr. Jaureguy: We object to that big bundle of checks going in on the ground that no more than two or three of them at the very most could have any possible relevancy to this case. There is just a whole bundle of two or three hundred checks.

The Court: Why do you want all of the checks admitted?

Mr. Strayer: Well, we think, for one thing, your Honor, that the matter of serial numbers on the checks is of some significance in view of the disputed items here, the \$25,000 check and the three hundred ninety or eighty-two odd dollar check that was given by Parker to Mr. Stegmann. They have certain serial numbers on them. Now, by making a chronological ledger and by trying to fit those checks into that chronological ledger, it is disclosed that the \$25,000 check which purportedly was written in August according to the serial number should have

been written the preceding May or June, and the \$382 dollar check which purportedly was written during the month of August, according to the serial number would not have been written until December, 1951. Now, we cannot give the picture without having these checks and the serial numbers on them.

The Court: When was the check cashed, the \$382 check?

Mr. Strayer: In December.

The Court: In December?

Mr. Strayer: The \$382 check actually was cashed in December. [1260]

Mr. Buell: December 31st.

The Court: Objection overruled. It may be admitted.

(Bundle of checks previously marked Plaintiff's Exhibit 47 for identification was received in evidence.)

Mr. Buell: I might clarify the record. The reporter has also marked as A, B and D, that is, as A, the ledger of the serially numbered checks; Number 47-B, the ledger of the counter checks; and 47-D, the list of deposit slips for the years 1949 and 1950, and Mr. Jaureguy has delivered to us this morning some additional checks, about 20 or 30, I would say, which we are having a list prepared of at the same time.

The Court: Have you furnished Mr. Jaureguy with a list, copies of the ledger sheets?

Mr. Buell: We already have.

Mr. Jaureguy: In addition to those, I have shown you three others, I think, that I didn't give you. I

have shown them to you, eight dollars, one twelve-dollar check, and another one.

Mr. Strayer: Oh, yes, you told me.

Mr. Jaureguy: The same objection I make to these on the basis of the same objection I made to the preceding Exhibit, which was the check themselves.

The Court: Objection overruled. Admitted.

(Ledger sheets previously marked Plaintiff's Exhibits 47-A, B and D were received in evidence.) [1261]

Mr. Strayer: In connection with this list of checks, your Honor, we just received from Mr. Jaureguy last night an additional package of checks which we had not before, and we would like to add them to the ledger.

The Court: All right, do that later.

Mr. Strayer: I have overlooked the fact that 44, 45 and 46 apparently have not been admitted. Those are copies of income tax returns of Walter F. Stegmann for the years 1949, 1950 and 1951. We offer them.

Mr. Jaureguy: We object to that on the grounds that they have no possible bearing on the Parkers nor in any way could be binding upon them nor affect their liability in this case anyhow.

The Court: They may be admitted.

(Photostatic copies of individual income tax returns for Walter and Edna Stegmann for the years 1949, 1950 and 1951, previously marked

Plaintiff's Exhibits 44, 45 and 46 were received in evidence.)

Mr. Strayer: Now we offer Exhibit 48, which is a certified transcript of various mortgages and other encumbrances appearing against Walter Stegmann in Yamhill County, I believe.

Mr. Buell: All of those documents were unsatisfied of record as of the time of this transaction.

Mr. Jaureguy: Object to that on the ground that it is incompetent, irrelevant and immaterial. [1262]

Mr. Ryan: I object to it on the same basis and on the further basis they are not conclusive on the part of the defendant Stegmann with regard to indebtedness.

The Court: I did not hear you.

Mr. Ryan: On the additional basis, not only that they are incompetent, irrelevant and immaterial, but that they are not conclusive upon the defendant Stegmann with respect to what they intend to prove.

The Court: They do not have to be conclusive in order to be admitted, do they, Mr. Ryan?

Mr. Ryan: Not necessarily, no, your Honor, but I wanted to add that, and that they would be improper.

The Court: You objected and you moved for a withdrawal of the other count there on the grounds that plaintiff has failed to show that Stegmann was insolvent.

Now, it seems to me that if there is a long record of unsatisfied judgments in the county in which he lives, it is pretty good evidence that the man was

insolvent, at least at that time, at the time the judgments were entered. That merely confirms the statement of Mr. Ellis at the garage that the credit agencies and collecting agencies and the lawyers would not take the account because they said it was uncollectible. I think it is relevant and I think it is admissible.

Mr. Ryan: Of course, he had these in his possession and didn't question the defendant Stegman on them. [1263]

The Court: It may be admitted.

(Certified transcript of Yamhill County previously marked Plaintiff's Exhibit 48 for identification was received in evidence.) [1264]

* * *

Mr. Strayer: I am offering Exhibits 83, 84 and 85, which are the \$500 check and the two options referred to in the testimony of Mr. Davis.

The Court: I will take that one under advisement.

Mr. Jaureguy: While you are taking that under advisement, I wish you would consider this objection, and that is that we object to it on the grounds that under the rules of evidence neither the character or the credibility of a witness or a party may be proved by any particular wrongful actions, and they are claiming that this a particular wrongful act, and therefore it can have no bearing, to repeat the term, *res inter alio acta*. That expresses what I have in my mind which I have rather quickly explained.

Mr. Strayer: I am glad you explained to me what that term was.

The Court: I do not think that that is applicable to a fraud case. I was under the impression that similar transactions close in time are admissible in order to show intent. [1268]

* * *

Mr. Strayer: Now, the only other matter we have is the deposition of Mr. Rutherford which was taken during the recess of this trial and we want to offer the Rutherford deposition as an Exhibit.

Mr. Jaureguy: Notwithstanding the fact that that is a little closer than the Davis, Smith matter, we object to that on the ground that it is entirely a different transaction and has no bearing on the merits of this case.

The Court: I will take that one under advisement for the reason I have not seen his [1270] testimony.

* * *

CARL STEGMANN

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Where do you live, Mr. Stegmann?

A. Willamina.

Q. How long have you lived in Oregon?

(Testimony of Carl Stegmann.)

A. All my life.

Q. And are you related to Walter Stegmann?

A. I am his brother.

Q. You are his brother? A. That's right.

Q. Are you acquainted with Chet Parker?

A. Yes.

Q. How long have you known Chet Parker?

A. Oh, a couple of years, I suppose.

Q. Have you ever met Mr. Paul Winans?

A. I seen him one time, yes.

Q. At one time? A. Yes.

Q. When was that?

A. Well, that was in August last year, it was.

Q. August, 1952?

A. I believe it was, or '51. I am not sure. [1278]

Q. '51? A. '51.

Q. Do you remember the day in August that it was?

A. Well, not exactly. It was about the middle of August.

Q. Would you say it might have been August 18th? There has been testimony here that it was.

A. It probably could have been, yes.

Q. Where was it that you saw him?

A. Well, it was at his place the first time I seen him.

Q. Who else were there?

A. Well, I was with my brother.

Q. Did you go any place that day with Mr. Winans?

(Testimony of Carl Stegmann.)

A. Well, we went up to, first up there at Lost Lake.

Q. Did anybody go with you?

A. Well, I was with my brother and Mr. Winans.

Q. Was there anybody else went up?

A. No, not we——

Q. Well, I want to ask whether there weren't two men from Portland, surveyors, went up?

A. Well, they was in a different car.

Q. They were in a different car? A. Yes.

Q. But you and Mr. Winans and your brother, then, went up in his car, and then somebody went up in another car? A. That is right. [1279]

Q. How many were there in the other car?

A. Two.

Q. Were they surveyors?

A. They seemed to be. That is what they was up there for.

Q. Did they do surveying work up there at Lost Lake?

A. Well, yes, they were running lines around a piece of property up there.

Q. Then when you got through, did the five of you go back to the Winans place?

A. Yes, that is right.

Q. At any time did you see Chet Parker?

A. Yes, he was up there.

Q. Just tell us when and where you saw him?

A. Well, these surveyors was—there was kind of an office up there, and these surveyors had their car parked outside, and I was out there talking with

(Testimony of Carl Stegmann.)

them, and Mr. Parker pulled up on the other side of the road and got out of his car, walked across the road, and talked to me because I had seen him before, knowed him slightly before that. I knew who he was, and he went on in to the office, and shortly afterward, well, him and my brother and Mr. Winans were inside, and then they came back out, and I don't know what they were talking about, but that is about all.

Q. When Chet Parker went in the office, were the two surveyors still there, or had they gone, if you remember?

A. They left about that time. [1280]

Q. They left about that time?

A. It has been quite a while ago. I just don't quite remember. They left about that time.

Q. You say you do not know what Chet Parker, Mr. Winans and your brother were talking about when they were inside?

A. No, I do not. I never paid any attention to their business. I didn't have any interest in it, and I never paid any attention to what they were talking about.

Mr. Jauregui: You may take the witness.

Mr. Ryan: We have no questions.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. What is your occupation, Mr. Stegmann?

A. I work with my dad down at his farm.

Q. Where is the farm?

(Testimony of Carl Stegmann.)

A. Down at Willamina.

Q. Has your brother been in the stock-raising business?

A. Well, he worked there with my dad several years ago. That is, oh, that was before the war.

Q. Your dad had some cattle on his place?

A. Oh, yes, that is right.

Q. What I was wondering about was whether your brother had operated any ranches with white-faced cattle?

A. I was in the army during the last war, and my brother was [1281] staying there on the place then.

Q. He was taking care of your father's place?

A. Well, yes, he was helping my dad then on the place at that time.

Q. My question was whether he had operated any ranches of his own? A. No.

Q. Has he raised white-faced cattle?

A. No.

Q. Both of you went up there to Hood River, that is, in 1951, and since that time you have worked on the farm out there at home?

A. I have, yes.

Q. Do you do any logging, too?

A. Well, last summer I did a little logging, yes. I had a small Cat, and I logged there on my dad's ranch.

Q. On your dad's place, were you?

A. Yes.

(Testimony of Carl Stegmann.)

Q. You have not hired out for other loggers, have you? A. No.

Q. What were the circumstances of your getting acquainted with Chet Parker in the first place?

A. Well, my brother lived in McMinnville, and I was down to see him several times, and Mr. Parker had an occasion to be there, and I was introduced to him. [1282]

Q. You never worked for him? A. No.

Q. Now, what was the occasion of your going up to Hood River on, during about the middle of August, 1951?

A. Well, it was during the hot part of the summer, and I didn't have too much to do around the place there at that time, and my brother come down and asked me whether I wanted to go along for a ride or not. I was rather interested in going up there to see that part of the country, and I just had a chance to go along so I just took him up on it.

Q. Where was Walt living at that time?

A. He was living at The Dalles.

Q. He came down to McMinnville to pick you up and then take you back?

A. Well, his relations lives down there, too.

Q. He had some relations around McMinnville?

A. Oh, yes, our folks both live there.

Q. When he came down there to pick you up was his wife along?

A. By golly, I don't remember.

Q. When you drove back up to Hood River, who was in the car besides yourself and Walt?

(Testimony of Carl Stegmann.)

A. There was nobody with us besides me and Walt.

Q. Nobody drove back up? A. No.

Q. You don't know whether Walt brought his wife down to [1283] McMinnville?

A. No, I don't know that.

Q. Did you see Mrs. Walt Stegmann at any time during that day that you were up there at Hood River? A. No.

Q. You did not see her? A. No.

Q. You don't know where she was at that time?

A. At that time, no, I do not.

Q. On what day did you go up there? Was it the same day that you went up on to the Lost Lake property? A. Yes, it was the same day.

Q. You had to leave from McMinnville kind of early then?

A. Let's see, wait a minute, let me think. Yes, it was late that night. We drove during the night.

Q. Then you started up the day before you went up to Lost Lake?

A. Yes, that is right. We went on the road that night.

Q. Where did you stop over night?

A. Well, he had this place rented at The Dalles, and we stayed up there the night, then drove back to Hood River the next morning.

Q. The night before you drove to The Dalles?

A. That is right.

Q. Was Mrs. Stegmann up there?

A. No, she wasn't. [1284]

(Testimony of Carl Stegmann.)

Q. No one there at the house except you and Walt?

A. That is right.

Q. What was it, a house or an apartment?

A. Well, it is kind of a, I don't know what you would call it. Duplex, I suppose, is what you would call it.

Q. A two-apartment place?

A. That is right.

Q. Where was it located, Mr. Stegmann, in The Dalles?

A. Golly, you got me there what street it is on. I could find it again if I went up there, but I couldn't tell you what street it was on.

Q. Was it in The Dalles proper?

A. I believe it would be, yes.

Q. Inside the city limits?

A. I believe it would be.

Q. What sort of car was Walt driving at that time?

A. He had a Buick convertible.

Q. That is the one you used to drive up there?

A. That is right.

Q. Did he have another car besides the Buick convertible?

A. I believe he had, but I don't remember what kind of a car it was now. I ain't sure. He has had several different cars, and I just don't remember. I remember we used the Buick convertible on that trip.

Q. Well, you got up to The Dalles the night before, and about [1285] when did you leave the place to go to Hood River?

(Testimony of Carl Stegmann.)

A. We left there fairly early in the morning because, well, it must have been, I would say, about nine o'clock when we got up to the Winans place.

Q. Where was the Winans' place?

A. Well, it is, well, I just don't remember the name of that little town that is up there, but you go out of Hood River and go toward Mt. Hood. Now, I don't remember just what the name of that little town is that you go through out there.

Q. Was Winans living in that sort of a little town?

A. No, it is out in the country.

Q. Out in the country?

A. Yes.

Q. Then whose car did you drive up to Lost Lake in?

A. Well, Walt's Buick.

Q. And Winans joined you in that Buick?

A. Yes, that is right.

Q. Any of Mr. Winans' children go along?

A. No.

Q. Were you driving the car, or was Walt?

A. No, Walt was driving the car.

Q. You got up to Lost Lake about what time?

A. Oh, boy, well, it must have been about an hour after we got to Winans, and it must have been about ten, I suppose. I never paid any attention, but I imagine it was about ten, approximately. [1286]

Q. All right, then, what did you do?

A. Well, we went down there and these—as I said before, these surveyors was up there with us.

Q. Do you know what their names were?

A. No, I don't remember.

(Testimony of Carl Stegmann.)

Q. Two of them? A. Yes, that is right.

Q. And you worked around on the place all day?

A. Yes, we did.

Q. Did you take a lunch up with you, or something to eat?

A. Well, we bought some lunch there at a little store that is there at the lake lodge.

Q. About what time did you leave?

A. Oh, I imagine about 4:30 to 5:00.

Q. Was it begining to get dark at that time?

A. No, no. I imagine these surveyors, they had to come back to Portland, I suppose. That is where they said they was from.

Q. While you were up there on the place, did you overhear any conversation regarding the ownership of this land that you were on?

A. No, not that I remember.

Q. You did not hear any discussion at all as to who owned it?

A. No, I just took it that Mr. Winans owned it. He took us up there to show it to us, that is, to my brother, you might say. I really was not interested in it. [1287]

Q. Had your brother been shown the land prior to that day that you were up there?

A. I don't know that.

Q. You do not know whether he had been up there before? A. No, I don't know that.

Q. Was it after you had been up there with him that he made this deal to buy the property?

A. That I don't know either.

(Testimony of Carl Stegmann.)

Q. You don't know when he did?

A. No, that I couldn't say.

Q. You were not present at any time when there were any discussions about the purchase of the property?

A. No, I never heard any business matters brought up at all on it, actually.

Q. Now, you got down to Mr. Winans' home about what time?

A. Oh, I would say it was probably five to five-thirty. I don't really remember. I don't believe I checked on the time too close there. I know it was getting towards evening.

Q. What did you do there?

A. Well, the only thing I did, I was talking to those surveyors most of the time. They made out their field notes and I was out there talking to them most of the time.

Q. While you remained there, you did not see the surveyors go into this service station building with Mr. Winans?

A. Not that I remember, no. [1288]

Q. Well, in fact, all the time that you were there you were talking to them; were you not?

A. Most of the time, yes. Well, we was wandering around there.

The Court: When you are saying "there," do you mean out in the field or back at Mr. Winans'?

Mr. Krause: Well, no, they had gotten down to Mr. Winans' place.

Q. While you were there at Mr. Winans' place,

(Testimony of Carl Stegmann.)

you were either wandering around, you say, or standing there talking to the surveyors?

A. That is right.

Q. Were the surveyors still there when you left the place?

A. No, I believe they had left before we did.

Q. You believe they had gone?

A. I believe they had gone.

Q. When did you leave?

A. Well, shortly after Mr. Parker got there.

Q. You did not leave by yourself? A. No.

Q. Shortly after Mr. Parker got there you and your brother left? A. That is right.

Q. Where did you go from there?

A. Well, we went to Hood River and had us something to eat, and we started to go back to McMinnville. [1289]

Q. To McMinnville? A. That is right.

Q. You drove back to McMinnville that Saturday night, too? A. That is right.

Q. When you left up there at the Winans place, Chet Parker was still there, was he?

A. Well, now, I don't really remember whether he was still there or not. It seems to me like somebody drove up on the road. Now, there were several cars parked there and I don't know whether he left right then or whether he was still there. I believe he was still there. I rightly wouldn't swear to that.

Q. This one day is the only day that you were ever up there in that Hood River area; is that right?

A. That is right.

(Testimony of Carl Stegmann.)

Q. Just that one time? A. Yes.

Mr. Krause: I think that is all.

Cross-Examination

By Mr. Strayer:

Q. Mr. Stegmann, where is your home?

A. Willamina.

Q. How far is that from McMinnvile?

A. Oh, I'd say about 20 to 21 miles, something like that.

Q. Are you the brother of Walter Stegmann who took over his logging equipment? [1290]

A. That is right, I did have some of his logging equipment for a while.

Q. You have all of it now, don't you?

A. That is right.

Q. Then you are engaging in the logging business?

A. I am now, yes. I am using some of his equipment now.

Q. Have you ever had any business transactions with Mr. or Mrs. Parker?

A. No, not any business transactions, no.

Q. How did it happen you went over to your brother's house on August 17th?

A. Oh, that I really don't know. I was—I went to his house quite occasionally. Being his brother, I just—any time I would be in town I would go over there to see him if he was home.

(Testimony of Carl Stegmann.)

Q. What time did you go over there on the 17th?

A. By golly, you got me there. I think I was in McMinnville that day, and I had went over. I think it was in the afternoon sometime.

Q. Now, what did your brother tell you that he was going to do?

A. Well, about the only thing he told me, he was going up there to look at some timber up there, or some land, and he asked me whether I had ever been up in that country, and I told him no. And he says if I wanted to ride along, he says, I could go along with him. [1291]

Q. Did he tell you he had a contract on the timber?

A. Well, I really don't remember now whether he did or not.

Q. Did he tell you that Mr. Parker was interested in the timber?

A. That I don't remember either. That has been so long ago I just—I couldn't recall all of the conversation.

Q. Well, now, you drove up, then, in the afternoon of August 17th; is that right?

A. Well, yes, it was late in the evening that we left McMinnville.

Q. Did you by any chance see Mr. Parker that day?

(Testimony of Carl Stegmann.)

A. No, I didn't see him until that other—until the next evening.

Q. You didn't see either Mr. or Mrs. Parker?

A. No, I didn't see either one.

Q. You did not by any chance drive through Vancouver and talk with the Parkers before you went up there?

A. No, never went through Vancouver that I remember.

Q. You drove over to The Dalles. Then you doubled back the next morning and went up to Lost Lake?

A. That is right.

Q. Your sole interest was just going along for a ride?

A. That is about the only thing I had to do with it.

Q. Was there any discussions that you remember that day at all about either your brother's interest or Mr. Parker's interest [1292] in the property?

A. How was that again?

Q. Do you remember any discussion that day at all about either your brother's interest in the timber land or Mr. or Mrs. Parker's interest in it?

A. Well, I don't remember anybody saying about Mr. Parker's interest in it. The only thing I know, he was up there. I figure he must have had because when he came up there that evening—

Q. Why did you figure he must have an interest?

A. Well, the man walked up there—well, as he walked over to the office and started talking, why, I

(Testimony of Carl Stegmann.)

mean, it looked like he was expected or something like that, and I presume——

Q. Well, didn't you know, as a matter of fact, that Mr. Parker had been staking Mr. Stegmann in timber deals before this one?

A. Well, I had heard that he had bought some timber from him now.

Q. Well, had you not also heard that he was financing your brother in timber transactions?

A. Well, I imagine it amounts to the same thing.

Q. That was rather common talk, wasn't it, around McMinnville? A. Yes——

Mr. Jaureguy: Object to that. You cannot prove agency by common reputation.

Mr. Strayer: Well, I don't think it is particularly important. Let it go. [1293]

Q. Well, now, up there on the 17th or on the 18th, did you talk to Mr. Parker at all?

A. No, I really didn't talk to him. I spoke to him. I didn't talk to him.

Q. Did he talk with these two surveyors?

A. That I couldn't say.

Q. Did he say "hello" to them, and then did they say "hello" to him?

A. That I couldn't say either. There's a kind of a park like there, and I had been looking around that, too, and I was not right with them all the time either.

Q. Were you with them when Mr. Parker drove up? A. Yes, I was standing right by the car.

Q. Were you talking to them at the time?

(Testimony of Carl Stegmann.)

A. I was talking to the surveyors at the time.

Q. How close to the car did Mr. Parker come?

A. Oh, I would say 20, 30 feet.

Q. He walked on into the service station?

A. That is right.

Q. Did you watch to see what they seemed to be doing in the service station? A. No, I did not.

Q. I take it your brother Walter was in there at the time? A. Yes, he was.

Q. Then later he came out before Mr. Parker, didn't he? [1294]

A. Well, let's see, I believe they all come out about the same time. That I don't really know.

Q. Which one of you drove away first? Was Mr. Parkers' car still there when you and brother left?

A. Yes, it was, I believe.

Q. Were the surveyors still there when you left?

A. No, they had left before we did.

Q. Oh, the surveyors left before you and Walter Stegmann?

A. That is right. I believe they did.

Q. You were with your brother constantly, then, from the afternoon of August 17th until at least the night of August 18th? A. Yes.

Q. You were with him all the time?

A. Yes.

Q. During that time did he make any telephone calls to Mr. Parker or receive any?

A. Not that I know of.

Q. Did Mr. Stegmann mention that he had talked

(Testimony of Carl Stegmann.)

with Mr. Parker about meeting him up there on the property?

A. No, I really don't recall that he did.

Q. Did Walter by any chance tell you whether he had seen Mr. Parker and had told Mr. Parker that he wanted him to go up with him on the 18th to pay Mr. Winans the \$4,000?

A. No, well, let's see—he didn't discuss any business with me because I was not interested in the business part of it. [1295]

Mr. Strayer: I think that is all.

Mr. Jaureguy: That is all.

Examination by the Court

Q. Is Walter Stegmann your older brother?

A. That is right.

Q. How old are you? A. Thirty-one.

Q. Are you married? A. No, sir.

Q. Have you lived at the home place for a number of years? A. That is right, sir.

Q. Where is your home place?

A. It is four miles northwest of Willamina.

Q. Do your mother and father live there, also?

A. Yes, sir.

Q. Who owns that place?

A. My father does.

Q. Doesn't your brother have an interest in that place? A. No, not that I know of.

Q. Didn't he buy some cars that was put in the farm of your father, a truck?

(Testimony of Carl Stegmann.)

A. I don't remember now.

Q. You do not remember?

A. That he did or not.

Q. Well, your brother has done a lot of work around the house, [1296] hasn't he?

A. Well, he was there during the war when I was in the army.

Q. I mean 1949, '50 and '51, didn't he do a lot of work around that house?

A. Oh, not too awfully much. He was there a lot.

Q. How about that gravel that he put on the ground?

A. Well, he did haul some rock in there; that is right.

Q. Wasn't that worth about seven or eight thousand dollars, or was it \$11,000 it was worth?

A. By golly, I don't know.

Q. How much gravel did he put on?

A. They hauled quite a lot of rock in there, all right.

Q. What was the name of that man who put the rock on?

A. By golly, I don't remember what his name was.

Q. Didn't you work out there when they were putting the rock on?

A. No, I was not home right at that particular time. I was helping a neighbor doing some harvesting right at that time.

Q. Didn't you come home at night?

(Testimony of Carl Stegmann.)

A. Oh, yes, in the evening.

Q. You saw the work that was being done?

A. Oh, yes.

Q. How many men did they have putting on that rock? A. They put it in a dump truck.

Q. Pardon?

A. They had a dump truck to haul it in. [1297]

Q. How many men were doing it?

A. Golly, I don't know.

Q. How long a period did they work at the house?

A. Oh, I guess two or three weeks.

Q. But you were never there when they did the work?

A. That was just during the period I was gone during the days.

Q. And every time that you came home they had—when you left they had not arrived, and when you came home they had already gone?

A. Generally gone, yes.

Q. About how many feet of rock did they put on? How long is this pathway?

A. Well, I would say, oh, I don't know, it would cover quite an area there.

Q. You never paid for any part of it, did you?

A. No.

Q. Walter Stegmann paid for it all?

A. That is right.

The Court: That is all.

Mr. Strayer: May I ask a couple of questions along that line?

(Testimony of Carl Stegmann.)

Cross-Examination

(Continued)

By Mr. Strayer:

Q. Can you tell me, Mr. Stegmann, what was the purpose of putting the rock on the home [1298] place?

A. Well, it got pretty muddy there in the winter time.

Q. I know, but were you building a road, or was it some other kind of area?

A. Well, most of it was right around the place there, building a lane, I suppose.

Q. Was it all in roads, in the form of roads?

A. Yes, more or less, yes.

Q. Do you know a man by the name of John D. Bailey? Ever hear that name before?

A. Not that I remember of.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: That is all.

Cross-Examination

By Mr. Ryan:

Q. Isn't it true that there are 80 acres that have been added to the home place there that were logged just north of it? A. That is right.

Q. Who was in on that logging operation?

A. Well, dad sold the timber off of that to another fellow.

(Testimony of Carl Stegmann.)

Q. Did your brother do any of that logging?

A. No, not last year.

Q. Not last year. Was there any logging—was there—on that 80 acres was it required that any fire trails be built, roads be built, that you know [1299] of?

A. Not that I know of.

Q. Do you recall any logging operations in 1948 or 1949 on the Pea Vine that your brother was involved in?

A. Yes, he was logging up there.

Q. Those 80 acres on the—that had been added to the home place, is that now part of your family holding there?

A. Yes, it is.

Q. I see, and did Walter have something to do with trading for those 80 acres?

A. Yes, he traded another fellow some of the timber that was on another part of the property for that piece of land.

Q. For that 80 acres?

A. Yes.

Q. Did Walt do that?

A. Yes, he did. He transacted that.

The Court: I do not understand that. In whose name is this 80-acre tract?

The Witness: It is in my dad's name.

The Court: Does your father own it?

The Witness: Yes.

The Court: Who got the money for the timber?

The Witness: I think my dad did.

The Court: Were your father and your brother in partners in the logging operation, in logging that tract?

(Testimony of Carl Stegmann.)

The Witness: No. [1300]

The Court: You were not in partnership?

The Witness: No.

The Court: That is all.

Mr. Ryan: No more questions.

Cross-Examination

(Continued)

By Mr. Strayer:

Q. I'm sorry, but I still do not understand that 80 acres.

Mr. Jaureguy: I haven't the slightest conception of what it is about.

Q. (By Mr. Strayer): Do I understand, Mr. Stegmann, that Walter had an 80-acre tract that he acquired by trading the timber on your father's farm?

A. Yes, then he had to pay my father for the timber.

Q. In other words, then, Walter bought the timber on your father's farm, and your father used the money to buy the 80 acres adjoining; is that right? A. I think so, yes.

Q. Well, now, is this rock work we have been talking about, does that have anything to do with the 80 acres? A. No.

Q. Does it have anything to do with the roads that were necessary in order to log the timber on your father's farm?

A. Not on that piece, no.

(Testimony of Carl Stegmann.)

Q. Did it on some other piece?

A. Well, I used part of that road this summer, this fall, on a [1301] piece. The road is still there.

Q. To haul timber off your father's farm?

A. That is right.

Mr. Strayer: That is all.

Examination by the Court

Q. Was any of that road built to take any timber for Walter Stegmann?

A. Well, he did log some off.

Q. What year?

A. Oh, this was several years ago.

Q. Before the road was built? A. Oh, yes.

Q. Has he still got timber in that area?

A. No.

Q. Why did Walter Stegmann build that road?

A. Well, I think he made an agreement to put—he had to put the road back in shape, something like that, I just imagine.

Q. Made an agreement with whom?

A. With his dad who owns the land now.

Q. You thought it was—what was the condition of the road before they put the rock in?

A. Well, it was in pretty fair condition then to haul logs down over it. Then I suppose he had to put rocks in it to put the road back in condition.

Q. How many yards of rock were on that road before they began [1302] to haul?

A. There wasn't any.

(Testimony of Carl Stegmann.)

Q. There wasn't any? A. No.

Q. How much rock was put on after?

A. Oh, boy, that has really got me there.

Q. Pardon?

A. That has really got me there.

Q. How many thousand feet of timber did he move over the road?

A. That I really couldn't say either. That I don't know.

Q. In other words, you do not know very much about this transaction except on the day, on August 18th, when you were out there in front of Mr. Winans' place; isn't that right?

A. That is correct.

Q. And everything else you have forgotten about?

A. Just what was his business. I don't pay a great deal of attention to it.

Q. And the rock on the road was his business and not your business? A. That is right, yes.

Q. But you were living on the place all the time? A. That is right.

Q. Who talked to you about this transaction recently?

A. Well, the first I knew of it was when Mr. Jaureguy there talked to me about it. He called me up here. [1303]

Q. Who? A. Mr. Jaureguy.

Mr. Jaureguy: That is me.

The Witness: That is where I got acquainted

(Testimony of Carl Stegmann.)

with him. He called me up. I didn't even know what he had been talking about.

The Court: You had not talked to your brother Walter about this transaction at all since it happened?

A. No, no.

Q. You do not see him very often?

A. No, not here lately I haven't. I haven't since he has moved out of McMinnville now. I have not seen him very often.

The Court: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. That is, you came to my office with your brother some little time ago?

A. That is right.

Q. And I questioned you about the trip up to Lost Lake? A. That is right.

Q. I did not question you about this gravel business and those other things?

A. No, you didn't.

Q. You told me, just like you have said here today, that you couldn't remember anything that had happened up at Lost Lake, [1304] and I asked you about things, too, that you recall?

A. I would say——

Q. I quizzed you and tried to find out?

A. I don't remember anything about it because I was not paying any attention to it.

(Testimony of Carl Stegmann.)

Q. I say, I quizzed you about it and asked you about it and tried to find out whether you had any recollection or if there was anything said about details, anything else, and you said, just like you have said here, that you were along for the ride and didn't know what they said?

A. That is right.

Q. But you did remember that you saw Chet Parker up there?

A. That is right.

Mr. Jaureguy: That is all.

Mr. Ryan: No further questions.

Recross-Examination

By Mr. Strayer:

Q. Did you talk with either of the Parkers before this trial?

A. No.

Q. You have never talked with them about this August 18th transaction?

A. No, I never have.

Mr. Strayer: That is all.

The Witness: The fact is, today is the first time I have seen Mr. Parker since that day. I believe I have seen him drive [1305] by in the car, but never have talked to him.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: That is all.

The Court: That is all.

(Witness excused.)

The Court: We will take a recess.

(Recess taken.) [1306]

CLYDE A. SMITH

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Where do you live, Mr. Smith?

A. Portland.

Q. You have lived here how long?

A. Since December 7, 1949.

Q. What is your business or occupation?

A. At present I am unemployed. My business generally is timber.

Q. Have you been connected in any way with the Multnomah Plywood Corporation?

A. I have.

Q. In what capacity?

A. As head of their log department and log buyer.

Q. Were you an officer of the corporation?

A. I was.

Q. What was your position?

A. I was vice president and member of the Board.

Q. What did you say you were beside the log buyer?

A. I was acquiring timber for them also.

Q. How long were you—for how long were you in the business of buying timber for the Multnomah Plywood Corporation? [1207]

(Testimony of Clyde A. Smith.)

A. Since it was first started in December of 1949.

Q. Prior to that time had you had any experience with respect to the purchase or sale of timber?

A. With Peninsula Plywood in Port Angeles.

Q. How long were you with them?

A. I was with them two different times, early in the 40's—I say early in the 40's, it was from November in 1941 until March or April, I believe, of 1943. Then I was in Oregon for a time.

Q. Where were you for a time?

A. I was in Oregon for a time. Then I went back to Port Angeles in 1945 in the fall, September to be exact.

Q. You were there that time how long, until?

A. Until December of 1949.

Q. When you went with Multnomah?

A. Yes.

Q. Do you recall investigating and negotiating with respect to purchasing some timber from the defendant, Chet Parker, in this case at Lost Lake?

A. Yes.

Q. How did you first learn about that? Was it through Chet Parker?

A. Yes, it was. I can't recall whether it was by phone or in person.

Q. Prior to that time had you had anything to do with purchase [1308] of other timber from Chet Parker for the Multnomah Plywood Corporation?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. What timber had you purchased from him before that?

A. It was called the Bear Creek Tract, near the Nestucca River in Tillamook County.

Q. About how much was involved in that purchase?

A. It seemed like it was between six and seven million feet of timber.

Q. How long before the negotiations on the Lost Lake timber was the purchase made on the Bear Creek timber?

A. It was early in the year, perhaps in January or the early part of February of 1951.

Q. Had your contacts and negotiations with Mr. Parker been satisfactory up to that time? I mean in connection with the Bear Creek or any other negotiations you had with him?

A. Very good, quite satisfactory.

Q. Did you generally find him a man of his word? A. Yes.

Q. Now, after you first discussed this timber with him, what was the next contact? Did you have occasion to have a survey made?

A. You are speaking of the Lost Lake timber now?

Q. Yes, the Lost Lake.

A. Yes, I contacted our cruiser, who was Roy Kenny, and asked [1309] him to go up there and look at it.

Q. Now, as I understand it, Roy Kenny was not

(Testimony of Clyde A. Smith.)

devoting his full time to work for the Multnomah Plywood Corporation, was he?

A. No, he was on a retainer basis, giving it at least two weeks of each month.

Q. Did he furnish you with a cruise of that property? A. He did.

Mr. Jaureguy: I think in order to expedite matters I will offer in evidence Exhibit 116, which is a cruise by Roy Kenny of the Lost Lake timber. Everybody has seen it.

Mr. Buell: We will object to the receipt of that in evidence unless counsel is in a position to assure us that Mr. Kenny will be present for examination.

Mr. Jaureguy: Well, I will assure them that he will be present, and I will also say, if they will permit me to refer to the cruise and discuss it, why then, I won't offer it until after he testifies.

Mr. Buell: That is all right, yes.

Q. (By Mr. Jaureguy): Handing you this Exhibit 116, is that a copy of the Kenny cruise?

A. It appears to be. This is the type of cruise units that he used.

Q. Did you come to any decision as to whether it was desirable for Multnomah Plywood Corporation to purchase this timber if they could make a deal with Mr. Parker? [1310] A. Yes.

Q. Did you have a meeting of the Board for the purpose of considering that question?

A. Yes, we did.

Q. Do you remember when that meeting took place?

(Testimony of Clyde A. Smith.)

A. It was the evening of August 20, 1951.

Q. Now, I would like to offer in evidence a certified copy of the meeting of the Board of Directors, which is Exhibit 117.

The Court: Any objection?

Mr. Strayer: No objection.

The Court: It may be admitted.

(Document, certified copy of the minutes of the Board of Directors' meeting of August 20, 1951, of Multnomah Plywood Corporation, marked Defendants' Exhibit 117 for identification and received in evidence.)

Mr. Jaureguy: I do not care to have the witness read it now.

The Witness: I just read my name on it. I am sorry.

Mr. Jaureguy: That is all right.

Q. You say that meeting was on August 20th?

A. Yes.

Q. Besides the members of the Board, who else were present?

A. Mr. and Mrs. Parker were invited in and attended part of that meeting.

Q. Before that meeting did you have negotiations with them or [1311] discussions with them as to what they would be willing to do and you would be willing to do? A. Yes.

Q. Just tell us what those negotiations were?

A. Well, now, I can't recall the date that we talked about it.

(Testimony of Clyde A. Smith.)

Q. Do you mean it was before the meeting at an earlier date, or was it on the same evening?

A. It might have been in the earlier afternoon or evening.

Q. Of the same day?

A. Of the same day. I can't remember exactly about that. I remember especially of them being at this meeting, but the negotiations prior to the meeting went something like this, that I was interested in the timber although I had not seen it yet. I was going entirely on the recommendation of our cruiser, Mr. Kenny, who was, in my estimation, a very reliable man.

Q. His recommendations with respect to what, the quality and kind of timber?

A. Yes, his ability as a cruiser and timber consultant I respected quite highly.

Q. You mean you respected him not only as a cruiser but also with respect to the quality of the timber?

A. I say his ability as a cruiser and timber consultant, which would take in the quality of the timber, but when I was talking with Mr. and Mrs. Parker about coming to some kind of an arrangement to purchase this timber, of course, they wanted a down [1312] payment. They wanted, it seemed to me, like something around sixty thousand, seventy thousand dollars. I am not exactly sure about what the price was, but on this Bear Creek property, due to a bad logging year, and we were getting started late—I say bad, it was wet in the spring and we were closed by fire, and we had a lot of road build-

(Testimony of Clyde A. Smith.)

ing to get in there—we did not take all of the peelers out of that timber, out of that tract, so, consequently, the payment was due on it. There was still more than enough timber left. The payment due was forty-two, forty-three thousand dollars, but the value still was on the land and Mr. and Mrs. Parker were willing to let us apply that payment which was due on Bear Creek, apply it on the Lost Lake property, plus \$25,000, which would make our down payment on that timber.

Q. Which would make your down payment about \$67,000? A. Something like that.

Q. But then it would postpone the \$42,000 payment on Bear Creek?

A. Yes, we were to pay that at what time later next year as it was logged, or at some specific date to be decided upon later.

Now, in addition to this there was other reasons, too, that we would like to have—while we wanted the timber, we were not in too good a position to talk cash because we were acquiring quite a block of timber down in Douglas County, the southern part of Douglas County. There was a timber owner down there by the name of McFadon, and he was going to offer a considerable [1313] amount of timber for sale right after the first of the year, which would be January, 1952, and it was quite important that the company have some of his timber, and we wanted to preserve our capital so that we would be able to have some money to deal

(Testimony of Clyde A. Smith.)

with Mr. McFadon when his timber was put on the market.

So, consequently, Mr. and Mrs. Parker agreed that they would deposit \$100,000 in escrow in a McMinnville bank in return for a mortgage on what is known as the Barbour tract of timber down in the Dutchman's Butte area that we owned; that we could use this money that was to be put in escrow to buy this timber of McFadon's, for a down payment at least on that timber.

Q. That is about the sum total of the negotiations you had with them? A. That is right.

Q. Then you attended the meeting; and who was president of the corporation at that time?

A. F. A. Johnson.

Q. Was he present at the meeting?

A. No, he was not.

Q. He was not present? A. No.

Q. Then, have you read the minutes?

A. I have. It has been some time since I have read them.

Q. Would you say that the minutes correctly set forth what took place at the meeting? [1314]

A. As I remember, the last time I read those minutes, they are correct.

Mr. Jaureguy: I would like to go over this partly so that I can have part of it in the record.

The Court: Go ahead.

Q. (By Mr. Jaureguy): This certified copy says: "Mr. Clyde Smith, together with Mr. and Mrs. Chet Parker, presented some details having to

(Testimony of Clyde A. Smith.)

do with the Lost Lake tract of timber which the Parkers are offering to the company for a total price of \$180,000. The Parkers said that they would accept a down payment of \$25,000. We owe the Parkers a balance of \$42,000 on the Nestucca River tract.”

That is spelled N-a-s-t-u-c-c-a. It ought to be N-e-s. shouldn't it? A. Yes.

Q. “——on the Nestucca River tract which we are purchasing from them. They are willing to apply this \$42,000 to the Lost Lake tract which, together with the \$25,000, will make a total of \$67,000. Inasmuch as they want \$100,000 applied to this purchase, they are willing to accept the difference of \$33,000 at the time we would start logging operations.”

I don't know as you testified to that.

A. No, I didn't. I remember now, that is correct.

Q. “The balance of \$80,000 would be required of us at about the rate of \$25,000 a month figuring that logs would be removed at [1315] a rate of about 1,500,000 feet a month.

“The Nestucca River tract balance of \$42,000 could be paid for after January 15, 1952.”

So that you mean that you were making—that was being deferred from August until January?

A. Yes.

Q. That is correct, isn't it? A. Right.

Q. “The Parkers stated that they would be willing to deposit \$100,000 for our use if we needed it

(Testimony of Clyde A. Smith.)

to handle the McFadon tract, if that came to an issue and would in turn be willing to accept as security for the \$100,000, title to the Barbour tract."

Have you referred to that tract in your testimony?

A. Yes, I did. That is a tract that is down in the West Fork area in Douglas County.

Q. That \$100,000 is what you wanted to have available in case you wanted to buy some timber in Southern Oregon after the first of the year?

A. Yes.

Q. "The tract in question is supposed to cruise about 6,000,000 feet."

Who said that?

A. I think those were Mr. Parker's words.

Q. "Roy Kenny's incomplete cruise is in excess of 4,000,000 feet." [1316]

What do you mean by an incomplete cruise?

A. Well, I mean that he didn't take a 40% cruise or a 20% cruise. He went through the timber and he walked through it and estimated that there would be about that much there.

Q. His cruise refers to a "Recon" cruise. What does that mean?

A. Reconnaissance.

Q. Reconnaissance cruise.

"He reports about 60% peelable logs and of very good quality. The Parkers have offered us the use of their boom at Hood River for rafting purposes. Smith estimates a cost of \$60 a thousand feet at Hood River, including the stumpage. Mr.

(Testimony of Clyde A. Smith.)

Parker said a road about one-half mile in length would have to be made in order to reach the timber.”

Did you estimate \$60 a thousand at Hood River?

A. Yes, I did at that time.

Q. Did that include building of the road?

A. No, we figured that the road would carry itself.

Mr. Strayer: What was that?

The Witness: I say we figured that the road would carry itself where it was located. Why I say carry itself is that generally when you take a road site there is some timber on it, and where this road would have been placed, the location of the road was on higher ground in good timber, good peeler quality fir.

Q. (By Mr. Jaureguy): Well, was that peelable quality fir part of this Parker tract? [1317]

A. No, that would have to be—the right-of-ways would have to be obtained from the Government, and in order to miss the park area up there we would have had to go in up on the hill with that hemlock and cedar that is closer to the lake.

Q. “After Mr. and Mrs. Parker left the meeting, further discussion and consideration took place. Mr. Smith said he had not seen the timber but intended to do so this week, and at the same time invited others of the Board to go with him. It appeared that the Board wanted more information as well as time to give the proposition, so far as financing is concerned.”

(Testimony of Clyde A. Smith.)

That is the end of the extract of the minutes.

Was there anything else that occurred there that has not been covered either by your testimony or in the minutes? A. At the meeting?

Q. Yes. A. No.

Q. Or after, or at that time and place, whether at the meeting or afterward, or before, it has been pretty well covered now, so far as you can remember?

A. The only thing, at the meeting, I think, after Mr. and Mrs. Parker had left, I did invite some of the other Board members to go up with me and look this timber over, and there was two of them decided to go, or it was decided that two of them should go.

Q. Who were those two?

A. Clyde McClain and Freeman Tollison. [1318]

Q. Did you later go up to see the timber?

A. I did.

Q. When was that? A. On Wednesday.

Q. Wednesday, did anybody take you up to show it to you?

A. We met Mr. Parker and his son at Hood River, and then we went in their car to the lake and it was really his boy that showed us where the corner was.

Q. His boy did? A. Yes.

Q. You followed them up to the lake?

A. Yes.

Q. Was there anybody else there besides you and the two members of the Board and Mr. Parker and his boy?

(Testimony of Clyde A. Smith.)

A. Yes, there was also some loggers that were logging for a company on the Bear Creek tract. I asked them to come up and take a look at it, too. I wanted them to look at it and give us a figure on what they would want to log it for.

Q. That is, what they would charge you for logging that tract?

A. That is right, putting the logs in the water.

Q. Did you get the information from them, what they would——

A. No, no.

Q. You didn't get that?

A. No.

Q. Why didn't you get it? [1319]

A. The reason—I don't know whether the company ever got any information or not, but before they had an opportunity to submit their figures, I had severed my relations with the timber department of Multnomah Plywood.

Q. Now, you say in this, in the minutes here, that you estimated a cost of \$60 a thousand feet at Hood River, including the stumpage. You had to assume certain logging figures for that?

A. That is right.

Q. And then if it was \$60, were you primarily in the cost at Hood River or the cost at your plant in Portland?

A. I figured that—considering the quality of this timber, if we could put those logs in the water at Hood River for a price of \$60, or even a little bit more, the value to us was there. There was plenty of cushion because so much of it was peelable.

(Testimony of Clyde A. Smith.)

You see, even the larch and the white pine could be peeled along with the fir.

Q. Well, if it cost you that in Hood River, what did you estimate it would cost at your plant in Portland?

A. Whatever the price would be in the water there, plus the towing, and if we wanted to warehouse that, the warehouse and storage charges.

Q. But do you have in mind now what those entire charges would be?

A. I can't say right offhand. The towing charges fluctuate as [1320] to the rate, you know, set by the ICC, but, of course, I would have to look at the rate book to see what they would be.

Q. Now, was that estimate of \$60 a thousand based on a price set forth in the minutes as to total price of \$180,000, total stumpage of \$180,000?

A. Would you repeat that, please?

Q. The \$60 price that you estimated at Hood River, was that on the assumption of purchasing the timber for \$180,000?

A. Yes.

Q. Plus all the additional charges of getting it down the Hood River?

A. Down the river.

Q. In the river at Hood River?

A. Yes.

Q. In the Columbia River at Hood River?

A. That is right.

Q. You made some reference to the larch and hemlock peelable. We will take up larch first. Is that the same that is sometimes known as Noble fir?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. I notice Mr. Kenny's cruise has 50% of them peelers?

A. Yes, there would be that much, at least that much peelers, with a possible—more percentage of peelable in there.

Q. What is the difference between a peeler and a peelable log?

A. Well, the peeler log, you have to recover so much face stock [1321] on it, but a peelable log is a log that you have peeled that is suitable for readily cutting, which you only expect to recover in plies of the veneer.

Q. The core inside? A. The core, yes.

Q. Now, on 3-ply plywood, I take it that one is core and two are face?

A. Faced in the back, whatever the——

Q. And five, why, there would be two cores or three? A. Yes, three.

Q. Three?

A. Yes, they go all by—the Douglas Fir Plywood Association considers larch or hemlock and even pine for core.

Q. Now, getting back to your trip up there to look at this timber, what did you do after you got there, you and the other four?

A. On the property?

Q. Yes.

A. Well, I started pacing up the line from the stake, you know. I got my bearings there and started pacing so that we would know where we were at, you know, and looked at the timber, and

(Testimony of Clyde A. Smith.)

we spent, I would say, well, all day. It was dark when we got back to Portland. We spent all day in the timber.

Q. You and the two loggers and the two members of the Board?

A. Two members of the Board.

Q. Two other members of the Board?

A. Yes. [1322]

Q. Were those two other members of the Board, had they any experience in cruising, or anything like that?

A. No, they had not, but they were old plywood hands. One of them was a peelerman.

Q. One of them was what?

A. A peelerman, the latheman.

Q. That is, this corporation operates somewhat on a cooperative basis; is that it?

A. It is a cooperative. I will take exception to that. It is a straight corporation with a co-op aspect to it.

Q. It is organized as a private corporation, but in its bylaws it provides that the stockholders have preferred rights of employment?

A. And in practice you do not declare—I mean, I say you, I mean this type of corporation does not declare dividends?

A. Generally, no, although they have.

Q. What would normally be profits are added to the wages? A. Up to a certain amount.

Q. That is why the men that work in the factory are members of the Board? A. That is right.

(Testimony of Clyde A. Smith.)

Q. One of these men was a peelerman?

A. Yes.

Q. What did the other one do; do you remember?

A. I think at that time he was stock rustler. He is the man [1323] that gets the material up to the speeders where they lay the plywood out.

Q. He discards what is not good material to go through the plywood?

A. Well, personally he does not do that. That is done through a process, you see.

Q. What did you think of the timber? What conclusions did you come to?

A. Well, I was well satisfied with the timber. It was good quality.

Q. What estimate did you make finally as to the amount of timber there?

A. Well, I had Mr. Kenny's cruise to go by, and I was satisfied that there was all there was there that he said was there.

Q. Well, he said his incomplete cruise showed 4,255,000? A. Yes.

Q. Parker's statement was 6,000,000.

A. Well——

Q. Was Parker a little too optimistic; do you think, or did that——

A. I was not too concerned because the value for our purposes at the price of \$180,000 seemed to me like it was there. I recommended that the company buy it.

Q. Did you make any effort to segregate what

(Testimony of Clyde A. Smith.)

was on, or did you know that there were—from the standpoint of legal propositions of real property—there were two different parcels, but was [1324] Lot 1, that was the northeast quarter of the northwest quarter of the Section——

A. Yes, I knew that there were two parcels, yes.

Q. Did you in your own mind segregate at all the values on one from the values on the other, or did that make any difference to you?

A. No, I didn't, with the exception of just a small area in the northeast portion of this lot that is next to the lake. I guess that has been called the Government lot.

Q. Government Lot 1.

A. The rest of it was swamp and cedar.

Q. So would you be able to give us your best judgment as to the proportion of value in the 40-acre tract and the proportion of value in Lot 1?

A. That would be kind of hard to do because cedar is pretty hard to get to a sawmill, cedar in the river, you know.

The Court: Mr. Jaureguy, I do not think he has indicated enough acquaintance with the volume of timber on each of the tracts involved to express an opinion as to the value of the timber on each tract. He might have the information, but you have not elicited it.

Mr. Jaureguy: I want to thank you for calling my attention to the deficiency there.

Q. What did you observe with respect to the

(Testimony of Clyde A. Smith.)

various kinds and quantities of timber and quality with respect to the two tracts, [1325] the 40-acre tract and the 15-acre tract?

A. As I paced on the north line when we first started, I passed what I thought was, would be the corner of the lot, and as we came back down through I was still pacing and there was quite a decided difference along this line—that would be the north and south line that divides the two lots—of the species of timber in this 40-acre tract. It started rising, the ground began to get a little higher, and it changed from cedar to fir and hemlock, larch, and white pine, and on the small tract it was mostly cedar with the exception of the timber in the northeast corner of it.

Q. Well, what is the relative value, what is the difference in values for your purposes over the cedar of the other types of timber there?

A. The cedar is only good for trading purposes.

Q. How much do you get for trading purposes?

A. It depends on how you can trade it, but generally it is not very valuable because it goes to shingle stock, and very few shingle mills have anything to trade, but the other timber, all of that on the 40 acres and part of the lot, the timber that was there that was of a peelable quality was very good, there was enough there to make it attractive.

Q. Well, now, based on what you observed on that day, can you give us your best estimate as to the relative values for your purposes as between the 40-acre tract and the Government Lot 1? [1326]

(Testimony of Clyde A. Smith.)

A. Well——

Mr. Krause: If the Court please, before that is answered, I don't think we ought to get into special purposes here. I think we are only concerned about the value of the timber on the two tracts, not for the purposes of Multnomah Plywood. They might be quite different than other people.

Mr. Jaureguy: Yes, I will amend the question and I agree with you.

Q. What would be your opinion as to the relative values of the stands of timber on the 40-acre tract as compared with Government Lot 1?

A. You mean dollar-wise?

Q. You can express it either dollar-wise or by fractions, whether one is worth so much more than the other.

A. There is a lot of difference in acreage there, and that is the hard——

Q. Government Lot 1, when you take out the allotted area, I think was about 15 acres.

A. About 15 acres.

Q. Then you have the 40-acre tract, and then you have described the difference in the stands of timber, the quality of timbers, the kind.

A. With the exception of this portion, I would say two acres maybe three acres, might even be more. It is just merely a guess on my part. [1327]

Q. We do not want mere guesses, but we would like your opinion, if you have one, as to how much more valuable the 40-acre——

A. I can answer you this way. The peelable

(Testimony of Clyde A. Smith.)

quality of timber on the Lot 1 is just as valuable to plywood as the peelable quality of timber on the 40 acres.

Q. Yes, but that is not what I am getting at. Maybe I did not make myself clear. Do you think that the timber, the total value of all the timber on the 40-acre tract was greater than the value of the timber on Lot 1? A. Yes.

Q. How much more? A. Considerably.

Q. Well, would you say twice, or three times that, one-half, or what?

A. Yes, twice, yes, three times.

Q. Three times? A. Yes.

Mr. Buell: Did he say three or two?

The Witness: Three times.

The Court: He said two; now he says three times.

The Witness: Yes.

The Court: Would you say that that value on the 40-acre tract constituted about 75% of the total value?

The Witness: I believe it would, 70%.

The Court: 70%? [1328]

The Witness: Yes.

The Court: So you would allocate 70% to the 40-acre tract and 30% to the 15-acre-plus tract?

The Witness: Well, should we have logged it, it would have entered on our books actually what came off of it. How it would have been allocated, now, I can't say.

(Testimony of Clyde A. Smith.)

The Court: Mr. Jaureguy didn't ask. Will you tell him what you want, Mr. Jaureguy?

Mr. Jaureguy: Well, he has answered it.

Q. Well, as I understand it, you have stated that you believe that of the total timber on both tracts, the value of that on the 40-acre tract is 70% of the whole, and the value of that on the Government Lot 1 is 30% of the whole?

A. Yes, that is, footage-wise.

Q. Now, did you notify Mr. Parker or Mr. and Mrs. Parker what your decision had been, whether you wanted to buy it or not?

A. Well, as it was stated there in the decision—in the minutes of the Board meeting, they wanted more time.

Q. To decide? A. To decide.

Q. But, I take it that in addition to requesting more time, they wanted to get your views after you had examined the tract? A. They did.

Q. Yes.

A. We went up there and I reported back just what I have stated [1329] here, very good quality timber, and it was something that we could use, and I recommended that they buy it.

Q. Was there any recommendation as to whether they should bind the bargain by the earnest money, or anything of that kind?

A. Yes; yes, I did, I wanted to place this \$25,000 in escrow.

Q. What do you mean "this \$25,000"?

(Testimony of Clyde A. Smith.)

A. The \$25,000 that we spoke of as part of the down payment.

Q. Oh, yes. Who did you have that discussion with? A. Mr. Bryson.

Q. Who is he?

A. He is secretary-treasurer of the corporation.

Q. What did he say about that?

A. He said that we had it all right, enough, but he didn't think we would be able to do it quite so quick.

Q. Better go a little slower on putting up real money? A. Yes.

Q. Well, then, what did you do? What was done? Was there a further step in consummating this transaction?

A. Then we went to Mr. Bledsoe's office to draw up the balance of our—an agreement, you know, and a contract of what we had discussed.

Q. Do you remember when you went there?

A. I can't say the day. It was in the a.m., in the morning.

Q. In the morning?

A. Of the day we went there. [1330]

Q. Did you hear Mr. Bledsoe's testimony?

A. I did.

Q. He said it was on the 24th.

A. He said it was on the 24th at 11:30 in the morning.

Q. The 24th would be four days after the directors' meeting? A. Yes, it would be——

(Testimony of Clyde A. Smith.)

Q. And I am sure it would be two days after your trip up there with the four others.

A. That is right.

Q. Who else besides you went to see Mr. Bledsoe?

A. Mr. and Mrs. Parker were with me.

Q. Just tell us what happened there with Mr. Bledsoe?

A. Well, we told him what we had in mind, and there was some discussion, you know, how it would be negotiated and put on paper, and I can't say how long we was there. The plan was agreeable to us, that is, Mr. and Mrs. Parker and myself representing the company, and he was to put it in rough form and submit the rough draft to the parties concerned for examination, correction, or rejection.

Q. Did you also discuss the Bear Creek matter there?

A. Yes, we did. It was going to be part of this transaction.

Q. Well, the Bear Creek money eventually went into escrow with the Bank of California, as I recall, or do you know anything about that?

A. I don't know anything about that. [1331]

Q. Did you ever get, or do you know whether the company ever got a draft of an agreement from Mr. Bledsoe?

A. I couldn't say.

Q. How long after that did you stay in the timber buying department?

A. It was just a few days.

(Testimony of Clyde A. Smith.)

Q. Where did you go then? I mean, what business did you go into?

A. Well, I worked in the plant for a while.

Q. What was the purpose of the change?

A. Well, I was away from home so much and my wife is sick. She still is sick and I just didn't like to be away from home any longer.

Q. What eventually happened to this deal? Did it go through, or do you know what happened?

A. No, it apparently didn't. I don't know what was finally decided upon.

Q. That is, you don't know first-hand?

A. No.

Q. But you know it didn't go through. They didn't get the timber, didn't log it?

A. Why it didn't, I don't know.

Q. You don't—

The Court: Didn't you remain on the Board of Directors?

The Witness: No, no. I resigned from the Board of Directors [1332] right soon after that.

Q. (By Mr. Jaureguy): On that Bear Creek property, did you know whether Mr. Parker had a better offer elsewhere than he did from the Multnomah Plywood Corporation?

A. I had heard it, yes.

Mr. Buell: I move that that be stricken, your Honor.

The Court: What difference does that make? I have let in a lot of evidence which you think is inadmissible, but how do you justify that?

(Testimony of Clyde A. Smith.)

Mr. Jaureguy: I cannot justify to the answer being admissible. I do justify the inquiry originally, but if all he can say is what he heard about it, then whether it would be admissible, if he had first-hand knowledge, is purely academic at this stage, I think, so you can take the witness.

The Court: Mr. Ryan?

Mr. Ryan: I have no questions.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Smith, it did not make any difference to you whether you were paying \$180,000 for a little over four million feet or whether there were six million feet there?

A. I figured this, that if there was four million feet there with the type of timber it was, that we could peel, that we could come out at that. [1333]

Q. But it cost you about \$45 a thousand stumpage if you had four million feet?

A. That is right.

Q. And a lot of the timber was a type that you could not even get \$45 a thousand for it down here at Portland? A. That is right.

Q. You could not even get your stumpage out of some of it? A. That is right.

Q. You say nothing about logging costs, hauling it and delivering it down at Hood River?

A. But you see, at the price of peelers, we were

(Testimony of Clyde A. Smith.)

buying mostly on the open market, were 85, 100 and 110 dollars—that is for number three, number two and number one, we couldn't buy a peelable type of log such as number two saw logs, we couldn't buy those on the open market—so even at that price I felt, in fact, the figures showed that we could still put those peelers into the plant for less than what we were paying for them on the open market.

Q. So you had not paid any particular attention to Mr. Parker's statement that there were six million feet on the property?

A. No, that was incidental to me.

Q. You were relying on Kenny's cruise?

A. That is right.

Q. Which showed four and a quarter million?

A. And then I went up and looked at it myself.

Q. Yes, well, but of course—— [1334]

A. But I recommended to the Board that we actually buy it, although before I recommended to the Board Mr. and Mrs. Parker were in and met with the Board.

Q. You already recommended it before you looked at it? A. No.

Q. Oh, you had not? A. No, I had not.

Q. Well, of course, with your view of the timber, you could not get any reliable idea of about how much timber was there by just looking at it, could you?

A. Well, I have a working knowledge of cruising timber myself although I don't represent myself as a cruiser. I have been in the timber enough and

(Testimony of Clyde A. Smith.)

inspected it that I felt that I could rely on my own—what I could see.

Q. From your view of the thing, did you think that there was more or less than four and a quarter million feet?

A. I was not in doubt at all that we would get four and a quarter million out of it.

Q. You thought there was all of four and a quarter million? A. Yes.

Q. And, according to Kenny's cruise, it shows that about half of the timber, or just about half exactly, was on the 40 acres and—or, just twice as much timber was on the 40 acres as on the other piece; isn't that right?

A. I guess maybe it is. I can't say yes or [1335] no.

Q. Well, didn't you have a map——

A. I had one.

Mr. Jaureguay: I will hand it to him.

The Witness: But I will have to look at it again.

Q. (By Mr. Krause): You have got a total of 4,255,000 of which 2,870,000 is on one piece and more than 435,000 on the smaller piece there; isn't that right? A. Yes.

Q. So the relationship there is about two to one instead of as you have put your value, three to one?

A. Well, the value——

The Court: He said 70%.

Mr. Krause: Well, his testimony was three to one, and later he put it 30 and 70, and that is still

(Testimony of Clyde A. Smith.)

practically three to one, or two and a half, pardon me.

The Court: On your figures it would be sixty-six and two thirds. It is only a difference of three and a third per cent.

Mr. Krause: Very little difference, but that was your idea about the division, both as to the quantity and the value, is it, Mr. Smith?

A. Yes, I will say that.

Q. There was no greater difficulty in logging the smaller piece than the larger piece, I suppose?

A. Yes, there would be.

Q. Why? [1336]

A. Swamp, there is quite a lot of swamp there.

Q. I thought you said there was not very much timber on the swamp, and what there was there was cedar?

A. You asked me if there would be any greater difficulty in logging it.

Q. Yes.

A. And it takes the same kind of a road to take out cedar as it does fir, and it would be the difference in the value of the two trees, what you would get off of it. Your logging costs would be greater.

Q. Well, in the first place, you knew that most of that swamp was in the reserved area, wasn't it? The swampy part of it was not even in the deal?

A. I believe at the time that I looked at it I knew that there was going to be a reserved area there, but I didn't know where the lines would be.

Q. But the swampy area had very little timber

(Testimony of Clyde A. Smith.)

on it anyway; isn't that right? A. Yes.

Q. Then it was after you got on to firmer ground that you got in to trees? A. Yes.

Q. What were you figuring the logging costs on when you were estimating that it would cost \$60 to put the stuff in the water at Hood River? [1337]

A. I figured \$30 for logging and transportation.

Q. \$30 for stumpage? A. Yes.

Q. Well, but on a basis of four and a half million, you would have to figure between forty and forty-five dollars a thousand for stumpage, wouldn't you?

A. You asked me how much the logging, what I was going to pay for logging, what I estimated the cost would be.

Q. You said your logging costs would be about \$30 a thousand; is that right?

A. Yes, and transportation.

Q. Logging and transportation? A. Yes.

Q. You estimated that it would cost you \$60 a thousand to put the logs in the water at Hood River?

A. Yes.

Q. That is in the minutes of the meeting there?

A. That is right.

Q. You told them \$64; therefore you were \$15 off; \$10 or \$15 off as to the cost of your logs down at Hood River on your own estimate?

A. There is no exception in there if there was six million feet.

Q. But, Mr. Smith, you saw the value of \$180,000 if there was only four and a quarter million feet?

(Testimony of Clyde A. Smith.)

A. That is right, I did. [1338]

Q. Actually, your logs would have cost you, on the basis of four and a quarter million feet, they would have cost you about \$75 a thousand at Hood River?

A. That is right.

Q. That would include cedar, hemlock, larch and peelable fir?

A. And peelable fir.

Q. Why do you call Roy Kenny's cruise an incomplete cruise?

A. It is a reconnaissance cruise.

Q. But in the minutes of the meeting it says that you told the Board that Roy Kenny's incomplete cruise is in excess of four million feet?

Mr. Jaureguy: That is not exactly what it says.

Mr. Krause: What does it say?

Mr. Jaureguy: It says this full sentence: "Roy Kenny's incomplete cruise is in excess of four million feet."

Mr. Krause : That is what I was reading.

Mr. Jaureguy: You were reading, "You told the Board that."

Mr. Krause: Oh, pardon me.

Q. Who told the Board that Roy Kenny's cruise was in excess of four million feet?

A. Who told the Board that?

Q. Yes.

A. Apparently I did, or I probably showed them the cruise sheet.

Q. Well, now, why was it called an incomplete cruise?

A. Well, there are two-run cruises; there are

(Testimony of Clyde A. Smith.)

four-run cruises; [1339] there are eight-run cruises, and the more you pass through timber, the more you see, and he was up there one day, and for that reason I don't think he made an eight-run cruise on it.

Q. Well, but the two-run cruise can be complete, can't it; a four-run cruise? One can be as complete as the other only you have not looked at as many of the trees on the place; isn't that right?

A. I do not quite agree with it personally on account of how fast the ground can change.

Q. At any rate, Roy Kenny was up there one day?

A. Yes.

Q. And his cruise was based on his working on these two tracts one day?

A. That is right.

Q. It was supposed to be a complete cruise, though, excepting that it was a reconnaissance cruise? He was supposed to have covered the entire property, wasn't he?

A. He was supposed to have gone up and looked at it, yes.

Q. All of it?

A. Well, yes.

Q. Not every tree?

A. Not every tree, no.

Q. Not every acre in the tracts?

A. But he was supposed to pace out the ground.

Mr. Krause: I think that is all. [1340]

Cross-Examination

By Mr. Buell:

Q. Mr. Smith, about how long was it prior to the time that you made the arrangements for Mr. Kenny

(Testimony of Clyde A. Smith.)

to go up and check that property that Mr. Parker first contacted you about it?

A. Well, if I remember right, Mr. Parker called the office and contacted me at Roy Kenny's place in Eugene.

Q. You were down at Kenny's place in Eugene?

A. I am quite sure that I was.

Q. Was that on a week day or a Sunday or a Saturday, or could you recall?

A. No, it would most likely be on a week day.

Q. Was that two or three days before Mr. Kenny went up to cruise it?

A. No; no, he left that night.

Q. He left that night?

A. No, it was probably on the 13th, because he said he would go right up.

Q. But it was during business hours on the day that he called? A. Yes.

Q. In other words, it was before dinner in the evening?

A. I stopped at his place that day, Roy Kenny's place in Eugene that day, and I am quite sure that I got a telephone call that day.

Q. You were down in Eugene seeing Mr. Kenny on company business, [1341] I suppose?

A. Yes, that is right.

Q. While you were at his house there in Eugene during the day, you got a telephone call from Mr. Parker? A. Yes.

Q. What kind of timber, or what kind of a deal did he say he had on the Lost Lake timber?

(Testimony of Clyde A. Smith.)

A. Well, I don't recall the conversation, but we were quite well satisfied with the dealings that we had had with him on Bear Creek, and I felt that it was worth investigation.

Q. Well, what I had reference to, Mr. Smith, was whether or not Mr. Parker said he owned some timber in Lost Lake or had an option on some timber, or was thinking of buying some timber from somebody that he might pass on to you?

A. No, I think he said he had some timber up there. I don't know.

Q. I see. Do you know Walt Stegmann?

A. Yes, however I couldn't have pointed Mr. Stegmann out of a crowd before this trial started.

Q. You had never met him personally, then?

A. Yes, I had.

Q. Prior to the time? A. Yes.

Q. That Mr. Parker first called you on this Lost Lake deal?

A. One day; I was with him one day. [1342]

Q. Was that in connection with some of Mr. Parker's business?

A. He showed Mr. Kenny and I the corner of the property down on Bear Creek.

Q. Mr. Stegmann showed you the Bear Creek lines, then; is that right? A. Yes.

Q. Did you say that Mr. Stegmann showed you the lines in the Bear Creek timber?

A. He showed us the common corner.

Q. Showed you the common corner?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. About when was it that you acquired the Bear Creek timber from Parker? Could you place the month at all or the portion of the year?

A. I can't say when it was that we acquired it. It was right near the first part of the year.

Q. Of 1951? A. Yes.

Q. Do you recall whether or not Mr. Parker mentioned Mr. Stegmann's name at all in connection with this property that he wanted you to go up and take a look at; the Lost Lake property I am referring to?

A. No, no, I didn't know anything about Mr. Stegmann dealing in connection with this at all.

Q. During the course of your negotiations with Mr. Parker, [1343] while you were thinking or contemplating purchasing this Lost Lake timber, did Mr. Stegmann's name ever come up? A. No.

Q. For all you knew, Mr. Parker owned the timber that he was offering you; is that correct?

A. That is right.

Q. Can you recall his making any definite statements to you that he did own it?

A. No, I think it was an assumption on my part.

Q. Just an assumption? A. That is right.

Q. There was no reference to options that he had, or—— A. No.

Q. Was there any discussion of whether or not Mr. Parker was going to furnish you any title insurance in connection with the property?

A. Well, now, that I cannot say. We left that up to our lawyers to see that the titles were all right.

(Testimony of Clyde A. Smith.)

Q. Can you recall anything being said about title insurance at the meeting in Mr. Bledsoe's office on August 24th with Mr. Parker and Mrs. Parker and yourself?

A. There may have been, but I can't definitely say that there was.

Q. Incidentally, Mr. Smith, you have attended a good portion of this trial; have you not?

A. Yes, I have been here all of it. [1344]

Q. The entire trial? A. Yes.

Q. The week before last also? A. Yes.

Q. I do not know whether or not you were asked on direct examination had you known Mr. Parker before you became connected with Multnomah Ply-wood? A. No, no.

Q. Mr. Kenny is not a professional timber cruiser, is he?

A. I don't think that he would—I don't think that he could be called a professional. He is a man familiar with timber and able to cruise timber, but he does more in the line of timber brokering.

Q. While you were upon the property itself, you were up there just the one occasion, were you not?

A. That is all, just once.

Q. About how much time did you spend up there on the ground?

A. Well, we left town—I say “we,” myself and the two Board members that went with me, we left Portland quite early in the morning and we were to meet Mr. Parker at Hood River, and we went

(Testimony of Clyde A. Smith.)

right up to the place, to the property from Hood River, and it was dark when we got back to Portland.

Q. Would you say you were up on the property about 6 hours, or more or less?

A. Yes, five or six hours. [1345]

Q. Five to six hours?

A. Five or six hours, yes.

Q. While you were up there, I take it you did not attempt to walk any systematic number of paces back and forth through the timber?

A. No, I didn't.

Q. It was more of an informational tour. You saw the timber, saw the corners, got a chance to look at the size of the trees?

A. That is right.

Q. But you didn't make any effort to examine the trees, estimate the number of defectives or the number of defective trees that there might be in the stand?

A. No, I didn't. I taped a few of the trees, you know, for diameter.

Q. You were in charge of both the log and timber buying departments of your company at that time?

A. Not at that time, no.

Q. Just timber? A. Timber.

Q. Did you have any connection with the log buying department?

A. That was mostly handled by the other men that was in there.

Q. But the two departments have to work——

(Testimony of Clyde A. Smith.)

A. I did buy logs occasionally, yes.

Q. Well, the two departments have to work closely together? A. That is right. [1346]

Q. Are you familiar with any trading agreements or trading arrangement that your company had with any other companies at the time for exchange of pulp logs, for example, for saw logs?

A. No, I can't say that I am familiar with anything like that.

Q. Well, isn't that what you would have had to have done with your—or wouldn't that have been the most economically practicable thing for your company to do with that hemlock and pulp wood that you get off of this tract, would be to trade it to one of the paper or fibreboard companies in exchange for peelable logs?

A. Yes, I beg your pardon. I would like to go back to that other question. I thought that you asked if I knew of any arrangement that we—any commitment such as a commitment that we might have had——

Q. I did ask you——

A. Is that what you asked me?

Q. That was the first question.

A. No, I didn't know of any commitment, but on the last question, now, yes, that would be the intent, to trade footage for footage.

Q. Well, it would be trading value for value, wouldn't it? A. No.

Q. In other words, you could not get an equal

(Testimony of Clyde A. Smith.)

number of footage in peeler logs for the same amount of footage in hemlock?

A. Generally, it takes two to one or three to one.

Q. Now, what could you have gotten for these hemlock logs in [1347] the Columbia River at the time you were thinking of acquiring this timber?

A. Per thousand?

Q. Yes.

A. I don't recall what the hemlock price was at the time.

Q. It wouldn't have been anywhere near \$75 a thousand, would it? A. No.

Q. You were familiar with the fact, were you not, that Mr. Kenny's cruise, for example, showed a total footage of hemlock of \$1,710,000 feet?

A. Hemlock, that much?

Q. Does that figure not sound right to you?

A. No, that don't sound right.

Q. You did not think there was as much hemlock as that?

(Witness consults document.)

A. That is right, there was a lot of that hemlock that was peelable grade hemlock. There was a lot that was pulp, but a lot that was peelable also.

Mr. Jaureguy: I didn't get the last part of your answer.

The Witness: I believe there was a lot of that hemlock that was peelable grade of hemlock.

Q. (By Mr. Buell): Mr. Kenny estimated 20%?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. And the rest of it you would have had to dispose of under some trading arrangement or just sell it on the market at market [1348] prices?

A. That is right.

Q. Well, now, then, by the time, Mr. Smith, that you had paid \$75 on an average price for your logs in the river at Hood River and towed them to Portland, the price would be pretty well up to or greater than what you could have gone out and paid for regular number one or two or three grade peelers on the market, peeler logs on the market; isn't that right? A. If we could get them, yes.

Q. You say at that time you were considering that number two, as low as number two saw logs were peelable? A. Yes.

Q. But you say you could not get any of those on the market? A. No.

Q. Well, now, going back a minute to the question of logging, I understood you to say that you didn't make any allowance for the cost of road building because you felt that the road would carry itself because of the timber that would come off the road; is that correct?

A. That would be in the logging cost of the road. I cannot identify the breakdown of what I figured our logging cost would be, that is, for each thing, you know, yarding and falling and bucking and that, but I figured it would be \$30 at the river, and I also felt that there would be enough timber on the road to get into the property that it would nearly carry the road itself. [1349]

(Testimony of Clyde A. Smith.)

Q. Well, but you would have had to have gotten your right-of-way over United States Forest Service lands? A. Yes, that is right.

Q. And before buying, or rather, before getting the right-of-way, you would have to arrive at an agreement with the Forest Service to pay them the market value of the stumpage of any trees that you cut in connection with laying out a right-of-way?

A. We would have to pay them their appraised value.

Q. That would be a negotiated figure based upon the amount of footage on the right-of-way?

A. It would be based entirely on their figures. It would not be negotiated at all. They do not negotiate with you; they tell you what they want, and you pay it, or if it is a bad deal you pay more for it.

Q. Do I understand that the Forest Service would have given you such a low price on stumpage of the timber off the right-of-way that you would have made sufficient profit from that timber alone to take care of the cost of putting in the road?

A. I don't have any idea of what the Forest Service would have charged for that. It may have been \$30, it may have been more per thousand stumpage, but there is quite a lot of good timber up there, and there is—where that road would go in there is very little low-grade timber. It was up on the higher ground.

Q. Isn't it true, Mr. Smith, that the only possible consideration [1350] for your company con-

(Testimony of Clyde A. Smith.)

templating making that purchase from Mr. Parker was because of the financing arrangements that you hoped to accomplish along with it?

A. No, no; I would not say that.

Q. Well, that was one of the major items, was it not?

A. No, it is a good quality timber up there. I do not think that that would be a deciding factor at all.

Q. Was your company in the practice of entering into a final contract for that substantial amount of timber on the basis of an incomplete reconnaissance cruise, such as Mr. Kenny's in this case?

A. I don't know whether they had—as has been said before, the papers that were really written up by Mr. Bledsoe would be offered for consideration.

Q. I am sorry, you did not understand my question, probably. My question was whether or not your company had previously, while you were in charge of the timber department, entered into contracts or agreements for the purchase of good substantial amounts of timber on the basis of a cruise, incomplete reconnaissance cruise such as Mr. Kenny made in this case?

A. We had never bought a piece of timber that had that much value on one single piece before, on Mr. Kenny's reconnaissance cruise; however, we had bought several pieces of timber of less amounts that

(Testimony of Clyde A. Smith.)

his reconnaissance cruise was very satisfactory as it turned out. [1351]

Q. Would the figures you were talking of in this case—you would probably have had some provision in the contract relative to the minimum amount of timber that would have to come off of the property; would you not?

A. There might have been something like that in the final draft of the contract. I can't say whether there would or wouldn't.

Q. You also mentioned the question of having to build a road into the swampy area in the southern part of the 25-acre tract. What would have been the necessity for that? There would have been no occasion to build a road there, would there?

A. Well, it would depend on whether we logged with Cats or not. You have got to build a road with a Cat to go after the logs wherever the location is. A Cat road is a lot different than a truck road.

Q. Going back a moment, Mr. Smith, to the occasion when Mr. Parker first called you about this timber, didn't he tell you that—or didn't he say that Mr. Stegmann would meet Mr. Kenny on August 13th to go over this property?

A. On August, the morning of August 14th.

Q. The 14th, rather? A. Yes.

Q. He made arrangements for you—rather, for Mr. Kenny to meet Mr. Stegmann up there on the 14th?

A. I can't say whether Mr. Parker told me that or whether he told Mr. Kenny that. [1352]

(Testimony of Clyde A. Smith.)

Q. In any event, you knew that Mr. Kenny was to meet Mr. Stegmann up there?

A. I knew it after I see the cruise sheets. I see his name is on the cruise sheet.

Q. I think we are all in agreement here, Mr. Smith, that August 14th was a Tuesday, so then that would have been some time Monday afternoon that Mr. Parker called you?

A. It could have been Monday afternoon; it could have been Monday morning.

Q. Either Monday afternoon or morning?

A. It was some time during the day Monday, yes.

Q. With reference to this tract of timber, if you bought it when did you contemplate starting logging ?

A. Not until next year. It was too late then to take a chance on the early winter.

Q. Going to that occasion when you were up on the property, did Mr. Parker go over the timber with you?

A. No, he didn't even go on the land.

Q. Where did he stay?

A. He stayed in the trail.

Q. In the what?

A. On the trail before we got to the line, even.
Mr. Buell: No further questions.

(Testimony of Clyde A. Smith.)

Redirect Examination

By Mr. Jaureguy:

Q. You mean he stayed on the trail all day, or that you just [1353] left him?

A. No, no; we left him on the trail. He and his boy were apparently heading back to the car, and they didn't go with us at all.

Q. This Kenny cruise reference to the "hemlock, large trees of good quality, 36 inches, 20% peelers," you said that number two saw logs were sometimes used for peeling? A. Yes.

Q. Now, does this 20% peelers that he refers to, does that include these number two saw logs, or is it just those that technically qualify for peelers?

Mr. Strayer: I will object to that, your Honor. I don't know how Mr. Smith can interpret Mr. Kenny's cruise.

The Court: Answer the question.

The Witness: Will you restate it again?

Q. (By Mr. Jaureguy): Is it your understanding that this estimate of 20% peelers under hemlock means the 20% that will qualify with the technical definition of peelers, or does that include everything that you would peel, including——

A. No, that is just what would be classed on the river under the Bureau scale as peeler hemlock.

Q. I don't suppose you could give us an estimate of the percentage that would be peelable under your process? A. No, I couldn't.

(Testimony of Clyde A. Smith.)

Q. You say that this call from Mr. Parker may have been Monday, [1354] Monday morning, Monday afternoon, or could it have been Monday evening?

A. I rather think it was sometime during the day.

Q. You think it was prior to what, prior to six o'clock, say? A. Six.

Q. But aside from that, you could not tell us what time during the day? A. No, I cannot.

Q. You say that you didn't know the Parkers before you became connected with the Multnomah Plywood. During the time you were connected with Mutnomah Plywood, was your acquaintance with them primarily business; was it social, or both?

A. Business.

Q. Just business. That will be all.

Examination by the Court

Q. You went with the Multnomah Plywood when it was organized, didn't you?

A. Yes, I was with the organization.

Q. When was that organized?

A. Started on August 16th. We got the option August 16, 1949. It was finally, the papers were finally drawn up on December 23, 1949.

Q. You remained with the company as timber buyer and log buyer from that time until around August of 1951? A. Yes. [1355]

Q. Is it your testimony that during that time

(Testimony of Clyde A. Smith.)

the largest deal that came up was this one on Lost Lake for \$180,000?

A. The largest single deal.

Q. The largest single deal? A. Yes.

Q. But you had—most of the other deals were much smaller?

A. Yes, average down in the West Fork area of upwards of eighty million feet. Our average was \$7.89 a thousand stumpage.

Q. Yes, but what was the total deal?

A. Altogether?

Q. No, each separate tract that you purchased, did that run about a hundred thousand or a hundred and fifty thousand?

A. I think there was one that was right close to a hundred thousand.

Q. What type of cruise did you have on that tract?

A. A lot of them were county cruise.

Q. Didn't you have your own cruiser go out?

A. Mr. Kenny went out and looked at them, yes.

Q. Did he make merely a reconnaissance cruise, or a much more careful cruise?

A. No, I would not say he made a careful cruise.

Q. He didn't? A. No.

The Court: The witness said he didn't make a careful cruise. [1356]

Mr. Jaureguy: He made a reconnaissance cruise?

The Witness: Yes.

The Court: Multnomah Plywood was not in the habit of hiring independent cruisers prior to the

(Testimony of Clyde A. Smith.)

time that they decided to make the purchase, these professional cruisers?

A. No, they never had up to the time.

Q. Now, as I understand it, just a couple days after the conference with Mr. Bledsoe, you terminated your relations with the timber buying department of Multnomah Plywood?

A. I would not say it was a couple days. It was soon after.

Q. When the Parkers were in Mr. Bledsoe's office, would you say that you had a firm contract with Mr. Parker except for having it written up and reduced to writing?

A. No, I would not say that we had a firm contract. I would say we were generally agreeable on it.

Q. And it would have to go back to the Board of Directors for final approval? A. Yes.

Q. Were any other cruises or investigations contemplated?

A. Our attorneys, before ever we would have made the deal, would have inspected the title, you know.

Mr. Jaureguy: I have got to have that louder. I didn't hear that.

The Witness: Well, I say——

Mr. Jaureguy: Your attorneys what? [1357]

The Witness: Previously on any of the other timber acquisitions that we had had, we would place it right in the hands of the attorneys, and they drew

(Testimony of Clyde A. Smith.)

up the contract and had the title searched and seen that everything was all right.

The Court: Mr. Smith, I was not concerned about the title. I was concerned about the amount of timber on the tract, and my question was, did you contemplate at the time you were in Mr. Bledsoe's office to have another investigation made of the quantity and quality of timber on the Lost Lake area?

A. Personally, no. If the company had asked for it, that would have been—we probably would have.

Q. From your experience in the past, you do not think that that would have been necessary, or the company would not have called for an additional survey?

A. I don't feel that that would have. They may have. I don't think that they would.

Q. Now, what did you do after you left the timber division of Multnomah Plywood?

A. I worked in the plant.

Q. Doing what? A. On a sander.

Q. How much experience had you had in timber buying prior to the time that you went to Multnomah Plywood?

A. I had had some experience with Peninsula Plywood.

Q. Is that another co-op? [1358]

A. Yes.

Q. Your whole experience in cruising had been with cooperative organizations?

(Testimony of Clyde A. Smith.)

A. Well, I had worked in timber and logged for several years.

Q. How long were you in the woods before you went with Peninsula? A. About ten years.

Q. What did you do?

A. I have done everything from work on the section to run a load crane.

Q. Did you scale?

A. I had scaled. I scaled with Clemon's Logging Company.

Q. How long did you work on the sander after August, 1951? A. Until the first of May.

Q. Of 1952? A. Yes.

Q. Then did you leave the company at that time?

A. Yes.

Q. And are you in the timber business now?

A. No, I am unemployed now. I am not in any business.

Q. How long have you been unemployed? Since May of last year? A. Yes.

Q. You have not taken any other employment?

A. No, no; I have not.

Q. You have been here from the inception of this case? [1359] A. Yes.

Q. Are you friendly to Mr. and Mrs. Parker now? A. We are acquainted, yes.

Q. Are you social friends?

A. Not socially, no.

Q. You were not, at the time you were a timber buyer, but I was just wanting to know whether

(Testimony of Clyde A. Smith.)

you have been close personal friends since that time?

A. I would not say close personal friends, no.

Q. Multnomah Plywood, in making purchases, even though in excess of \$100,000 would rely on your judgment and the judgment of Mr. Kenny?

A. Right.

Q. As to technical information?

A. Yes, they had.

The Court: Are there any other questions?

Cross-Examination

By Mr. Krause:

Q. Could I just have the date on which you went up to look at the land yourself, or the timber?

A. It was August 22nd.

Q. Your directors' meeting was on the 20th?

A. Yes.

Q. You were going up that week?

A. Yes. [1360]

Q. So the 20th was Monday, the 22nd—that's all, your Honor.

Recross-Examination

By Mr. Buell:

Q. Mr. Smith, as soon as Mr. Johnson got back from out of town, why, this deal fell through, didn't it?

A. No, no, I would not say that it did. It was probably a week.

(Testimony of Clyde A. Smith.)

Q. You did know that the company decided not to buy the timber? A. You say I did know?

Q. Yes. A. How soon——

Q. Or, you do know?

A. I do know now, yes. I have known it.

Q. Didn't you know about it at the time?

A. I have known of it for some time.

Q. You learned about it shortly after the company decided not to buy, didn't you? A. Yes.

Mr. Buell: Nothing further.

Mr. Jaureguy: That is all.

The Court: That is all.

Mr. Jaureguy: I might ask you this question on the Bear Creek. Do you know whether the timber that, and there was a little over a half a million feet or more than the reconnaissance cruise?

A. We just took out the old growth. We were merely going to [1361] take out the old growth on that, and there was little over a half a million feet taken out in 1951, and there was supposed to be a million and a half feet, and it looked very likely that we would get better than two million feet out of it the way the logs started out.

Q. That is, it looked as though it would overrun the cruise about a third, then? A. Yes.

Mr. Jaureguy: That is all.

(Witness excused.)

The Court: We will adjourn until ten o'clock tomorrow morning.

• (Evening recess taken.) [1362]

Friday, Feb. 6, 1953, 10:00 A.M.

(Trial resumed.)

The Court: Mr. Jaureguy, you may proceed.

Mr. Jaureguy: Yes, I may say, your Honor, that I have received a communication from the First National Bank of McMinnville with respect to the safety deposit box, which I now hand to Mr. Strayer.

The Court: Is there any objection to having that admitted in evidence without having Mr. Wortman called back?

Mr. Jaureguy: No objection whatever.

The Court: Do you want to offer it, Mr. Strayer, now?

Mr. Strayer: May we have a chance to look it over, your Honor? We will offer it later.

The Court: Very well.

Mr. Jaureguy: I am looking for an exhibit. I do not see it at hand. It is the cruise of Roy Kenny.

The Court: Yesterday they referred to it.

Mr. Jaureguy: Yes, they referred to it, and my recollection is that I kept it.

Mr. Lindsay: 116 is the number.

The Court: Mr. Lindsay, do you have an extra copy of it?

Mr. Lindsay: I have a copy of it, but not the one with the map on it. [1363]

The Court: Does anyone else here have a copy with the map attached to it?

Mr. Strayer: What was that exhibit number?

Mr. Jaureguy: 116. I have it, your Honor. [1364]

ROY KENNY

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Roy Kenny? A. Yes.

Q. Where do you live, Mr. Kenny?

A. At Eugene.

Q. You have lived there about how long?

A. Since 1940.

Q. What is your business or occupation?

A. It is Forest Engineer.

Q. Will you tell us what your training and experience has been as a Forest Engineer?

A. Well it is practically 25 years.

Q. What does the occupation of Forest Engineer entail?

A. Well, it entails the cruising of timber and the laying out of roads and the planning of operations in connection with timber.

Q. As a Forest Engineer, have you been operating independently or as an officer or official or employee of a company? A. Independently.

Q. Independently; and during your period of time as—during this period of time, have you ever been retained by the Multnomah [1365] Plywood Corporation? A. Yes.

Q. Over what period of time?

A. Over about a year and a half.

(Testimony of Roy Kenny.)

Q. When was that?

A. It was in 1951, up until December of 1952.

Q. During that period of time, what did you do for them?

A. Well, I did cruising, and I did road lay-out, engineering, just whatever happened to be necessary.

Q. Did you cruise any timber that was sold by Chet Parker, the defendant in this case, to the Multnomah Plywood Corporation?

A. No, I didn't do any actual cruising of the timber that was sold by Mr. Parker.

Q. What about the timber referred to in this case as Bear Creek timber?

A. Well, that was just a cruise of mine down there, a looking at the timber and accepting the cruise that was already made on it.

Q. Now, do you recall in August of 1951 a cruise of timber up at Lost Lake? A. Yes.

Q. Who requested you to make that cruise?

A. Mr. Smith at Multnomah Plywood at that time.

Q. I hand you here the Exhibit 116, and ask you if that is the cruise that you made? [1366]

A. Yes, that is a copy of the cruise. That is—the original is in Multnomah's files.

Q. Did you deliver that to the directors of the Multnomah Plywood Corporation? A. Yes.

Q. Did you furnish any other information to the directors that would enable them to pass judgment on whether they would buy this timber?

(Testimony of Roy Kenny.)

A. Well, now, that is just a rather hard question to answer. I approved the purchase of it, yes.

Q. You approved the purchase at what price?

A. I didn't remember the price at this time. It was——

Q. Would you say \$180,000?

A. I think it was somewhere around there, yes.

Q. Did you investigate the, make any investigation of the values of timber in that district to reach that conclusion?

A. Yes, I did.

Q. What investigation did you make?

A. I remember sending in—they made a Government sale in there about—the Government sale was coming up about 30 days later in there in that same area. I remember sending that in to the office as a basis of the figure of what the timber was to be worth.

Q. Sent in what if the sale was coming later?

A. Yes. [1367]

Q. What did you send him?

A. Well, I had bid on it, because that is the approved practice by the Government. The bid price, it is according to how the bidders bid the price up.

Q. Do you recall what the approved price was?

A. The approved price was somewhere around \$30.

Q. \$30 a thousand? A. Yes.

Q. How did that timber on the tract which you cruised compare with the timber on the Government tract on that Government price of approximately \$30 a thousand?

(Testimony of Roy Kenny.)

A. It is the same thing, only there is more white pine and larch, which is higher value than straight hemlock.

Q. The cruise which you made, was that known as a reconnaissance cruise? A. That is right.

Q. What is that?

A. What we call a double-run cruise. We go through each forty twice, 20% cruise. You work through each forty four times.

Q. Well, now, would you say that—what would you say about your conclusions there as to the number of feet? Would you say that is right, or is it high or low, or what?

A. It is conservative. We always try to figure to cruise timber so that it will cover that much and possibly more.

Q. So that would you say that the figures you give there—that [1368] the amount of timber there is equal to or more than the figures you gave there?

A. The amount of timber I have given is fair, what is on the ground. It would all depend on how it was logged. They might recover a good deal more timber than this, but they should not have any loss.

Q. You say you approved the sale?

A. Yes.

Q. Was that approval written or was it just oral communication?

A. No, that was just oral with Mr. Johnson, the president of Multnomah Corporation.

Q. Do you know how long that was after you made your cruise?

(Testimony of Roy Kenny.)

A. Well, I believe it was the next day.

Q. The next day?

A. I came back through Portland.

Q. At any rate, do you recall talking to Mr. Johnson and telling him that you approved the sale at the price they were considering paying?

A. That is right.

Q. Might it have been later than that? I don't know that the price was determined by the next day.

A. Well, the only thing I have in mind is that I returned to Eugene immediately after making this cruise, that is, the next day, and was at Multnomah's office on my return.

Q. And discussed the timber with them? [1369]

A. I would have to check my records to see if it was the next day or not.

Q. You recall that you discussed the timber with Mr. Johnson? A. Yes.

Q. But you do not recall the price?

A. I do not recall the price, no.

Q. What would you say as to whether the timber there is worth \$180,000 to the Multnomah Plywood Corporation?

A. Well, that is a fair price, I think. It might be a good deal more than that if there was bidding in there. There are several large operators in there and if they should start bidding that price up—timber like this has been bid up over \$50 a thousand within the last year.

Q. Well, at the price of \$30 a thousand, if the amount of timber there is no more than your cruise,

(Testimony of Roy Kenny.)

would you say it would have been worth \$180,000 to the Multnomah Plywood Corporation?

A. Yes, it could have been. It could have been run up to \$200,000. There is practically a little over 4,000,000 feet here.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: I have no questions.

Cross-Examination

By Mr. Krause:

Q. Does that location of the timber have anything to do with the stumpage value?

A. Yes, it does. [1370]

Q. When you say that some of it has been run up to \$50,000, did you have in mind the cost of getting the timber out to water?

A. \$50 a thousand.

Q. Yes, \$50 a thousand. A. Yes.

Q. Did you have in mind the cost of getting this timber out to the Columbia River?

A. That is right.

Q. How much did you figure that cost would be?

Mr. Jaureguy: Pardon the interruption. I do not think, I do not recall the witness testified that he thought it was worth fifty. He said that others had paid fifty for similar timber.

Mr. Krause: He said similar timber had sold at \$50 a thousand. I want to know whether it is in the same location.

Mr. Jaureguy: That is all right, then.

(Testimony of Roy Kenny.)

Mr. Krause: That is all I am inquiring about.

Mr. Jaureguy: But I don't think your question was at all relevant to his testimony, whether he had in mind transportation when he says others paid fifty.

Mr. Krause: Well, Mr. Kenny, isn't it important, the cost of getting timber out, in considering what you are going to pay for stumpage?

A. And also the quality of the timber.

Q. Well, yes, but certainly the cost, this particular item of getting it to water is very important, isn't it, or getting it [1371] to the mill?

A. Or the railhead.

Q. Or the railhead? A. Yes.

Q. Therefore, when you were considering this timber up there, you had to have in mind the cost of getting it down to the Columbia River, didn't you?

A. Or the railroad at Dee, there.

Q. Is there a railroad at Dee where you could load logs? A. Yes.

Q. What did you have in mind as to the cost of getting it down either to the railhead at Dee or to the river?

A. Well, those figures would be a valuation of what it would cost in other areas. I don't know as I made any special actual figures or what the logging would be, what the trucking would be, or what the transportation would be.

Q. How could you place a value on stumpage without checking into, taking into account the cost

(Testimony of Roy Kenny.)

of getting it to the place where you were going to use the logs?

A. I have a general idea of what the cost would be.

Q. A general idea is enough in order to determine what a person would pay for stumpage?

A. That is right, yes.

Q. What figure did you have in mind as the cost of logging, transportation, getting the timber down to where it was to be used? [1372]

A. It should not be over \$30.

Q. Not over \$30. Well, when you say that similar timber has sold for \$50, was that paid for timber where the cost of getting it to the mill would be \$30 additional per thousand?

A. Yes, and sometimes more.

Q. So the average price of \$80 per thousand for this type of timber at the mill at that time in August, 1951, was not improper?

A. No, the timber was \$110 or \$115.

Q. Well, that was for peeler logs, wasn't it, Mr. Kenny?

A. That is right.

Q. What was the percentage of peelers in this lot?

A. Well, this gives it as 60% peelers.

Q. That 60% is only on the million and a half of yellow fir, though, isn't it?

A. Yes, but your white pine and larch is another item that is just as high as the peelers.

Q. Just as good?

A. And possibly higher priced.

(Testimony of Roy Kenny.)

Q. But your larch and white pine, did you lump the white pine with the larch? A. Yes.

Q. You had about 50% peelers there, and then you still had a—there is only a quarter of a million of white pine, you see, and 370,000 of larch, but you had a million, seven hundred thousand of hemlock of which there were only 20% peelers, and you figured [1373] that you could run at a price of—that is, that you could come out with a price even though your price was not up to \$110 to get them to the mill?

A. That is right, it was my thought that that hemlock and pine could be traded to mills right in that area for fir peelers. Multnomah is only interested in fir peelers.

Q. Isn't that hemlock, to get it out up there, hemlock in that area and get it down to the mills where it can be used, don't you ordinarily consider that the cost of getting it out, plus the cost of the stumpage is just about going to offset each other so that there would be nothing—

A. No, the hemlock in that area is a different quality than this hemlock we have in the Columbia River. The majority of this hemlock in the Columbia River is pulp wood and it is a low price, and hemlock that grows on the higher elevations is a high quality hemlock that gives a value consistent with the fir or the pine. Those mills that cut that, they get as good percentage of clears out of that the same as they do out of fir, and where they have their dry kilns, they dry it and sell it at a high

(Testimony of Roy Kenny.)

price. It is not pulp wood, and that is what you are basing your value on here.

Q. But your price on one, two and three hemlock kiln-dried lumber for framing houses and things of that sort does not run up to anywheres near \$110, does it, a thousand?

A. Your clears do. What clears and selects they would get out [1374] of it would.

Q. Well, the clears and selects would run \$110 a thousand? A. Yes.

Q. But what percentage of the logs would be clears and selects?

A. Well, that would be 25 to 30 per cent ordinarily in that hemlock.

Q. And the balance of it, the top price that you could get would be about what?

A. I don't know. I don't know what the selling price is.

Q. In August, 1951, is the time we are talking about. A. What is that?

Q. In August, 1951, is the time we are talking about.

A. Well, I had better go back for my files and find out what the prices were at that time. I don't know whether they are as high as they are today or not. The fact of the matter, the selling price of lumber is not my line.

Q. You do not have to know the selling price of lumber in order to determine value of stumpage?

A. I know what the price of logs are. Those logs can be traded.

(Testimony of Roy Kenny.)

Q. What about cedar logs? There was a million and a half of them—pardon me—no, there is 360,000 of cedar on your cruise. What were they worth, do you know, on the Columbia River?

A. Oh, somewhere around forty-five to fifty dollars.

Q. And your stumpage at \$30 and cost of getting it out at \$30 would make that cost you around \$15 a thousand after getting them [1375] out. You have only been figuring the stumpage, though, here, at about \$30 a thousand. Actually, on the basis of \$180,000, your stumpage was around \$45 a thousand; isn't that correct, Mr. Kenny?

A. Well, I say it depends on how they logged that. They might log a million or a million and a half more than I have on there.

Q. Well, do people buy timber on the chance that there is going to be a million and a half more than the cruise shows? A. That is right.

Q. They do?

A. And they also buy and pay higher prices for peelers that have to substitute for lower grades. It is the condition of the market.

Q. On the basis of your cruise, the stumpage was going to cost Multnomah Plywood about \$45 a thousand at \$180,000 for the whole deal; isn't that right?

A. Yes.

Q. So you were coming awfully close to that top price of \$50 for stumpage. The location of this timber was—strike that, that is all.

(Testimony of Roy Kenny.)

Cross-Examination

By Mr. Buell:

Q. Mr. Kenny, would you say that \$34 a thousand would be a poor average stumpage price for the fir and timber on those tracts?

A. \$34? [1376]

Q. Yes.

A. That would be a fair price. It would not be too high.

Q. How about, I believe in answer to one of Mr. Krause's questions you indicated that somewhere around \$14 or \$15 would be a fair price for the western red cedar that is on the property.

A. Well, there is such a small quantity of it that you really do not pay very much attention to the value of the cedar.

Q. Wouldn't that be about right?

A. It would bring, those logs would bring forty or fifty dollars on the market here.

Q. Allowing your \$30 per thousand to get them to the river, why, you could not afford to pay much more for \$15 for them stumpage?

A. That would all depend on whether they decided to leave them in the woods or log.

Q. Well, placing the maximum on the cedar, you say that fifteen would be the top you could pay for it?

A. Well, as I remember that cedar, it was—it is saw or shingle mill type, or that large, they are better than the average small cedar. It might be possible

(Testimony of Roy Kenny.)

if that was taken to a saw mill to get some a little up there in the upper grades of \$100 even. It would average maybe from \$35 on the low-grade to \$100 on the upper grades.

Q. Well, considering the stumpage price alone, the average stumpage price for the cedar on that property, you couldn't afford to pay much more than \$15 on it, could you, for stumpage [1377] on the cedar?

A. Well, it doesn't amount to anything. It is only 368,000 feet.

Q. Perhaps my question is not clear.

A. Well, those are hard things to understand today. On most of these Government sales, they put a price on the hemlock and cedar of from eight to fifteen dollars, and the operators very rarely even took it out of the woods because it just does not have the value, some of the incense cedar, but this is a higher quality western red cedar, the same as the hemlock is a better quality in that higher elevation up there than the lowlands.

Q. Is it your opinion then that the cedar would be worth less than \$15 a thousand stumpage?

A. No, it is not.

Q. Well, is that about a fair price for that cedar?

A. What are you trying to prove?

Q. Well, it is not a question of trying to prove. I am asking you what you feel was the reasonable market value that could be attributed to the cedar timber on that property at the time you inspected it?

A. Well, I figured the logs would be about \$50

(Testimony of Roy Kenny.)

and it would carry itself for what little amount there was.

The Court: \$50 a thousand?

The Witness: Yes.

Mr. Jaureguy: He is not talking about stumpage; logs. [1378]

Q. (By Mr. Buell): That is in the river?

A. That is the price for shingle cedar logs.

Q. In the river, in the river?

A. That is right; in the Portland market here.

Q. Well, then, what did you consider would be the fair average value of the hemlock on that property, the fair average stumpage value of that hemlock?

A. Well, we had in mind that that hemlock would be traded right in that area, and that would be somewhere around, possibly, forty or fifty logs.

Q. Also in the river?

A. No, right at the saw mills near the timber.

Q. What was the closest saw mill to the timber?

A. Well, I don't know. It would be about 20 miles, 15 or 16 miles, something under 20 miles.

Q. How much shorter haul is that from, than hauling it all the way down and dumping it in the river?

A. It is about half.

Q. Well, your logging cost of getting the hemlock to the mills in the area would run around \$27, wouldn't it?

A. How do you mean, the total delivered at the mill?

Q. To go back a minute, I believe you stated

(Testimony of Roy Kenny.)

that you felt your logging cost of getting the timber out of the woods and into the river would be about \$30 per thousand. You would not save any more than about \$3 per thousand on bringing it to the hemlock mills [1379] that were within 18 or 20 miles of where the timber was located, would you?

A. Well, yes, you might get back that \$25, take it off the costs you would have to put it in the water and raft it than if you just dumped it in the mill pond. You would arrive at maybe a \$25 mill price, and the \$15 stumpage price would bring you about your \$40.

Q. So you would just about break even on the hemlock, also, as well as the cedar?

A. That is right.

Q. Now, was it your opinion that all of this Noble fir and white fir and white pine was of sufficient quality to warrant taking it down to the river and on down to Portland?

A. Yes, but it would have been more logical to market it right there in the area, manufacture it there.

Q. That would be all of the pine and Noble fir and white fir? A. Right.

Q. It would be more practicable to attempt to market it in the area?

A. To manufacture it there.

Q. Incidentally, we were not able to establish yesterday—maybe you could help us—approximately what would be the cost of towing from boom in the

(Testimony of Roy Kenny.)

river at Hood River down to Portland per thousand? Would you have any idea of that as of the time you were looking at this property? [1380]

A. I think it was somewhere around \$2 a thousand.

Q. That would be delivered at the plywood mill on the river here? A. That is right.

Q. Now, going to the cruise itself, about how much time did you spend on the property, Mr. Kenny?

A. About 7 hours, as I remember it, between 6 and 7 hours.

Q. That was for the two-run cruise, which is a 10% cruise, isn't it?

A. Yes, it is 15 to 20 per cent cruise. I do that reconnaissance cruise a little different than the ordinary because I do it on the round acre count. It is practically the same as the 20% cruise. It would be fifteen to twenty per cent.

Q. Now, I noticed in your cruise report here, there was no reference to any cull trees. Isn't it the general practice in cruising timber to list the defective or cull trees which you have culled out from your cruise? A. Not unless it is requested.

Q. Do you have any record of the number of cull trees that you found in your cruise?

A. I think I could find that. It would possibly run twenty-five or thirty per cent of the defective trees.

Q. Are you quite sure that the defective trees are

(Testimony of Roy Kenny.)

not included within your total stumpage figures here?

A. They never are included in [1381] merchantable.

Q. They are not included. Where did you find the defect to—or in what timber here did you find the principal amount of defects?

A. In the fir. It is almost always in the yellow fir, overmatured timber.

Q. Didn't you find quite a considerable amount of defects in the hemlock, too?

A. Well, you might find some stump-rot in the hemlock, but that is figured in the cruising, and you have a tree—you deduct so much for that rot that may be in the stump of the hemlock.

Q. Wasn't there quite a bit of top breakage in the hemlock?

A. That is generally figured in at 10% for breakage as the cruiser's figures.

Q. Also quite a bit of snow breakage and wind snag in the hemlock?

A. No.

Q. Mr. Kenny, going back a minute to the prices on these timbers, what did you figure to be the average price that you could get for the white fir, Noble fir, and white pine? I believe you testified that they would have been most practicable to attempt to dispose of that to the mills in the area?

A. Well, that would bring, I figure, an average of around \$50 to \$60 in trading.

Q. Per thousand, on the average?

A. Yes. [1382]

(Testimony of Roy Kenny.)

The Court: There is one question I would like to ask.

Examination

By the Court:

Q. In making your estimate of volume, how many acres did you examine? I mean, how many did you consider?

A. There were two tracts. There was a 40-acre tract, and then there was another tract.

Q. How large was that other tract, and do you consider all of the timber on that tract?

A. I was trying to check that. I think that there was 28 acres reserved in there.

Q. Well, there was 25.88 acres. I believe that is the size of that small tract.

A. I have it on here as 28, but it is close enough, something around there.

Q. Did you estimate the value on that entire 25.88 acres?

A. No, that was deducted from there. It is really—it is about 67 acres.

Q. All together, you figured it would be about 67 acres? A. Yes.

Q. In that smaller tract, did you exclude certain portions?

A. I excluded the whole tract that was reserved and that was not to be logged.

Mr. Jaureguy: Might I—

The Court: Yes, will you clear that up? [1383]

(Testimony of Roy Kenny.)

Redirect Examination

By Mr. Jaureguy:

Q. I think that the witness' map there shows some misapprehension on the part of the witness, on the part of Mr. Kenny, in making that cruise, because he has this Lot No. 1 much larger than it admittedly is. Now, I don't know how he made that. I was going to ask him about that, but I overlooked it.

The Court: All right, you go ahead.

Q. (By Mr. Jaureguy): Now, there are two tracts here. One is the 40-acre tract. A. Yes.

Q. The northeast of the northwest quarter, and then next to it is a tract which is bounded on the east by Lost Lake? A. Yes.

Q. And is bounded on the west by the 40-acre tract? A. Yes.

Q. Now, you have that, that tract there on your map about, oh, 35 or 40 acres, don't you? It is just as plain as can be on your map.

A. Well, as I remember it, this is the point that we started from, and measured out to this corner of fifteen, and each one of those would be 330 feet. That would be 990 feet from here to there, and then we checked this—we left this little piece here and then took out that——

Q. Where did you learn about that reserve? Were did you get that? [1384]

A. That was at the time it was told to me that that was not to be cruised.

(Testimony of Roy Kenny.)

Q. Who told you that? A. Mr. Stegmann.

Q. Now, just if I could show him the other map, or some of the other maps that we have, because, as you will recall, your Honor, it is admitted that that lot is about 25.88.

The Court: That is right, and I was wondering what the property looked like.

Q. (By Mr. Jaureguy): In the reserved area, you have about 40 acres there, don't you?

A. Well——

The Court: The witness testified he had about 28 acres.

The Witness: With the reserved area, there would be about 38 acres, so this would fill in here, you see, so there would be only about two and a half acres out of this forty, if this was all there was (indicating).

Q. How much did you have in reserve?

A. This much here (indicating).

Q. That is what I say, you have about 40 acres before you take out that reserved area?

A. That is right.

Q. Instead of 25, and then you take out 28 acres as the reserved area, so 28 from 40 leaves——

A. Well, then, there was a misunderstanding, because—— [1385]

Q. ——leaves only 12?

A. Because that corner here was given to me as being on the property which would make this extended the——extended to the lake frontage clear over here, which would be 70—77½ or 78 acres in there.

(Testimony of Roy Kenny.)

Q. Did you see that on the ground, or did you take that from the Metsker map, or something?

A. No, we saw that on the ground. We ran over to the lake here, but this was not marked. There was a 16th post set there, as I remember it.

Q. Oh, so that was excluded there?

A. Yes.

Q. So that when you take out 28 from 40, that leaves about 12, doesn't it?

A. Yes, but we put in another five acres here that is over in this piece; was supposed to be on that property, also.

Q. That leaves 17, then?

A. So that if you take $7\frac{1}{2}$ from, as I have it here, about $18\frac{1}{2}$, would be $22\frac{1}{2}$, then $2\frac{1}{2}$, or just three acres total.

Q. $22\frac{1}{2}$. Then that is a little more than the other, but I still do not understand how that map should be different.

The Court: You figure that the timber that you were to appraise was on land covering about $62\frac{1}{2}$ acres?

The Witness: That is right.

Mr. Jaureguy: Yes, that is all I wanted to get, that [1386] discrepancy, but I neglected to point out that, or even question the witness about it, before we put him on the stand.

The Court: Go ahead, Mr. Buell.

(Testimony of Roy Kenny.)

Cross-Examination

(Continued)

By Mr. Buell:

Q. Mr. Kenny, Mr. Stegmann showed you all the, where the corners were on the property, and pointed out what the reserved area was to be; did he not?

A. Yes, we had the corners that—of course, we found them. I found and checked them through this witness corner here on the lake and the quarter corner over here, and this 16th corner down at the south of that forty.

Q. Then, your information as to what part of the property was going to be reserved by the sellers, came from Mr. Stegmann, too, didn't it?

A. That is right.

Q. Then you mentioned you had considered another timber sale in the area in arriving at your estimated price. Do you recall what sale that was?

A. I could find it in my files. It was a government sale from the Forest Service in that area.

Q. In the Mt. Hood National Forest?

A. Yes.

Q. Was that sale to take place after the time you were up there on the property?

A. Yes. [1387]

Q. Would that be the one to M & M Woodworking?

A. I don't know, I didn't keep track of it to see

(Testimony of Roy Kenny.)

who got that sale. How much later was that, thirty or sixty days?

Q. November 5, 1951.

A. That may have been. What area is that in that you refer to?

Q. Well, those were Townships 6 and 7, Range 6 East, Mt. Hood National Forest.

The Court: How big a tract was that?

Mr. Buell: I beg your pardon?

The Court: How big a tract was that?

Mr. Buell: 360 acres.

Q. Was that the one, or could you be sure?

A. Well, that is farther south and farther west.

Q. Where was the property that you had in mind located?

A. It was in this same—I think it was in 1 South and 7 East or 2—1 or 2 and 7 East. This was right within 25 miles, anyhow.

Q. How many acres were involved in it?

A. I don't know. I would have to check that up. I just mailed it in to Mr. Johnson to check.

Q. Was that the one to Columbia Veneer?

A. I say, I don't know. I didn't follow it up to see who——

Q. About 54 acres. Do you recall what the price was that was actually bid on the property?

A. No, I say I did not follow it up. All I did was pick the [1388] notice of a sale coming up.

Q. Well, we have a record here of a sale of 54 acres to Columbia Veneer out of Mt. Hood National Forest.

(Testimony of Roy Kenny.)

Mr. Jaureguy: I want to object to reading to the witness when the witness says he did not follow it up. It is just putting something in the record by reading what he has got in his hand.

Mr. Buell: It is already in evidence.

Mr. Jaureguy: Oh, it is, I did not see that.

The Court: But the witness has testified that he only saw the government appraisal and he didn't follow it up. He says he does not know to whom it was sold or at what price.

The Witness: That is right. It was a notice of a sale to come.

Q. (By Mr. Buell): What was the government appraisal on that? A. I don't remember.

Q. You don't remember. Do you have your records with you?

A. No, I do not have them with me.

Q. What would you have to do to find that out?

A. I would have to go to Eugene and hunt up my records and mail it in here.

The Court: I thought you testified that you sent that information to Mr. Johnson at Multnomah Plywood?

The Witness: It might be possible they would find it in their records down there.

The Court: Any other questions of this [1389] witness?

Mr. Buell: No further questions.

The Court: Mr. Jaureguy?

(Testimony of Roy Kenny.)

Redirect Examination

By Mr. Jaureguy:

Q. I thought in answer to a question by Mr. Buell, you said that they thought that they would break even on the hemlock. Did you mean to say that they would not get anything for the hemlock?

A. Well, they would get the cost of it, yes.

Q. You said the hemlock up here was much different than the other hemlock in the Columbia River area, and as good as the Douglas fir, I thought you said.

A. Not as good as the Douglas fir, but could be traded for Douglas fir. At that time, Multnomah was not interested in hemlock, only as a means of trading for fir.

Mr. Jaureguy: That is all.

We offer that cruise in evidence. 116, I think it is.

Mr. Buell: I wonder if Mr. Kenny could send up that record of that sale that he had in mind.

The Court: If you could find it, Mr. Kenny?

The Witness: I will try to find it, if Multnomah will let me have it out of their files.

Mr. Jaureguy: I do not think Mr. Buell is asking you to get it out of the files of Multnomah.

Mr. Buell: Wherever he can get it.

Mr. Jaureguy: Wherever he can get it? All right, go down and [1390] try to get it.

The Witness: Yes, I will try to find it.

The Court: Then send it to Mr. Jaureguy.

The Witness: All right.

(Witness excused.) [1391]

CHET L. PARKER

recalled in his own behalf, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Mr. Parker, I am handing you Exhibit 303. I want you to look at that and ask if you have ever seen that before this trial started?

A. Yes, I have seen it.

Q. Do you know where it came from?

A. Yes.

Q. How did it happen to be prepared?

A. Well, Mr. Stegmann had some notes, and I took them in to an engineer's office and had him draw this map from those notes.

Q. That is, you took some of the notes that Mr. Stegmann gave you? A. Yes.

Q. And took them to an engineer's office and had this map made? A. Yes.

Q. Do you remember when that was?

A. September—or August 29th or 24th, somewhere in there.

Q. Well, now, did you pay for that map by check the day you got it? A. Yes.

Q. Then what did you do with the map, I mean with Exhibit 303?

A. I looked it over and gave it back to Mr. Stegmann. [1392]

Q. Was that on or about the day that you have testified you got it, August 29th? A. Yes.

(Testimony of Chet L. Parker.)

Q. Then did you see it again, later?

A. Yes.

Q. When was that?

A. I believe it was when we went up to survey.

Mr. Stegmann and Mr. Winans and I went up on the property as set up on this reserved area.

Q. When was that? You testified to that before.

A. The 31st, I think it was.

Q. I beg your pardon?

A. I think it was the 30th or 31st.

Q. Well, I think you testified that it was the 31st of August.

A. That is what—yes, I think it was the 31st of August.

Q. You were up there, then. You have already testified to being up there, then. A. Yes

Q. At that time, you testified, I think, about an argument you had with Mr. Winans about the reserved area? A. Yes.

Q. Just tell us briefly about that argument?

A. Well, his idea and mine about the reserved area was not exactly the same.

Q. What was his? Now, by reference to the map which you have [1393] in your hand, Exhibit 303, what was his contention as to what the reserved area should be?

A. Well, what is marked off here (indicating). He wanted to keep the area that is marked here (indicating).

Mr. Strayer: What was that?

(Testimony of Chet L. Parker.)

The Witness: He wanted to keep the area that is marked off here (indicating).

Q. (By Mr. Jaureguy): Mark it off on Exhibit 303. What did you want?

A. Well, I didn't care how much of this area he got so long as I kept the timber on it, and I said, "Where some of these lots are, there is some timber on it." I didn't want him to have any of that.

Q. Was that a rather hot argument that you said you had with him? A. Yes.

Q. Then what else finally happened on the survey work that was being done that day? Who was doing that surveying work that day?

A. Well, Stegmann was doing the work. Everybody was working, but Stegmann was doing the surveying, and we agreed tentatively that I would get the timber land. As long as Stegmann could cut out the open land, he could go wherever he wanted to on land where the trees had no value, and that is what I considered trees of no value, of no consequence, but other than that I wanted all the timber on it, and that is what we did. [1394]

Q. Is that the reserved area that he surveyed off that day? Is that the reserved area that finally was put into the deed?

A. Well, I think it is, yes.

Q. Then did you have notes on that?

A. Yes, Stegmann gave me some notes on that.

Q. What did you do with that?

A. Well, I took it back and had another map drawn.

(Testimony of Chet L. Parker.)

Q. Did you take it to an engineer? Who was the engineer, by the way?

A. I do not remember his name.

Q. Mr. St. Louis, would you say?

A. Yes, possibly; American Bank Building, I believe it was.

Mr. Jaureguy: I am awfully sorry, your Honor, I had those checks——

The Court: It is eleven o'clock. We'll take a five-minute recess.

(Recess taken.)

Mr. Jaureguy: If your Honor please, I have two exhibits consisting of two checks that I didn't get until after the trial started. I showed them to Mr. Strayer immediately.

The Court: What is the number?

Mr. Jaureguy: I think it is 120.

(Check dated August 29, 1951, to General Drafting Service for \$12.00 marked Defendants' Exhibit 120 for identification.) [1395]

(Check dated 9-5- to General Drafting Service for \$18.00, marked Defendant's Exhibit 121 for identification.)

Mr. Jaureguy: I hand you Exhibit 120, and ask you if that is the check with which you paid for the drafting of Exhibit 303? A. Yes.

Mr. Krause: Is that 119 or 120?

Mr. Jaureguy: Oh, I beg your pardon. This is 120.

The Witness: Yes, 120.

(Testimony of Chet L. Parker.)

Q. (By Mr. Jaureguy): Is that the check with which you paid for the draftsmanship work on this exhibit? A. Yes.

Q. What is the date of that check?

A. Eighth month, twenty-ninth day of '51.

Q. What would you say about the day you got Exhibit 303?

A. Well, it would be on the day I paid for it.

Q. You got that on the same day? A. Yes.

Q. 29th day of August, 1951? A. Yes.

Q. I don't suppose you remember whether you went to the draftsman and got that first before you went to Lincoln Ferris, or is it the other way around? A. I don't remember. [1396]

Q. Then did you say that after you were up there on the 31st of August, aiding in the surveying work, that you got some more notes from Stegmann?

A. Yes.

Q. Did you deliver those notes to this General Drafting Service? A. Yes.

Q. Did they make another sketch or map?

A. Yes.

Q. Did you pick it up? A. Yes.

Q. I show you Exhibit 121 and ask you what that check was used for?

A. Well, this was to pay for the last map pertaining to this reserved area.

Q. That is the map that you got after you were up there on the 31st? A. Yes.

Q. And from the notes that were made at that time? A. Yes.

Q. What is the date of that check?

(Testimony of Chet L. Parker.)

A. Ninth month, fifth day of '51.

Q. Did you pick up the map at that time?

A. Yes.

Q. What did you do with that map? [1397]

A. Well, I believe I gave that to Stegmann, as I remember. It looked all right to me.

Q. As far as you know, is that reserved area, as set forth in the deed which you received, the same as the reserved areas shown on that map?

A. It must be very close. It looks that way.

Q. Have you seen the map since you gave it to Stegmann? A. No, I don't think so.

Q. Do you know where it is now?

A. No, I do not.

Mr. Jaureguy: We offer in evidence Exhibits 120 and 121.

The Court: Any objection?

Mr. Strayer: No objection.

Mr. Buell: No objection.

Mr. Krause: No objection.

Mr. Ryan: No objection.

The Court: It may be admitted.

(Checks previously marked Defendants' Exhibits 120 and 121 for identification were received in evidence.)

Mr. Buell: What were the amounts of those two?

Mr. Jaureguy: Number 120 was \$12.00 and 121 was \$18.00.

(Testimony of Chet L. Parker.)

Q. Now, there has been some mention here of your being an engineer and also some suggestion that you were a surveyor. Just give us a review of your training and experience and education [1398] that might have qualified you for either or both of those positions?

A. Well, I went through the ninth grade. I certainly was not the best student in the world, but neither was I the poorest. When I was overseas, I had quite a bit of—I gather quite a bit of mechanical knowledge, and when I came back, why, the government needed some—needed a man to help them on, oh, trucks and stuff like that, mechanics, so they had some fancy name of some engineer, and gave me it. I have forgot, it wasn't very much of a salary and I was there for a while, and that is the extent of my experience of being an engineer or anything of that light.

The Court: Mr. Jaureguy, I think that Mr. Parker, on his direct examination, explained all this, and the only evidence was that—all to the contrary, was that Mr. Stegmann had indicated that he had a friend who knew a little about surveying. There was no contention that Mr. Stegmann intended to bring up a professional surveyor or professional engineer.

As I recall it, Mr. Parker testified that he used the word "survey" in connection with making an appraisal, just the same as the insurance companies do when they value buildings and other things.

If you want to go into it, it is all right, but I

(Testimony of Chet L. Parker.)

know the facts. I remember that testimony very well.

Mr. Jaureguy: Just very briefly. Your Honor will recall I [1399] didn't take him on cross-examination on these points at all. I just went a little bit into some other points. That is my recollection. It will not take long, I can assure you.

The Court: All right. Go ahead.

Q. (By Mr. Jaureguy): What training, if any, or experience have you had in surveying?

A. I suppose you mean civil engineering? I suppose that is what they call it, like a county surveyor? Well, I have had none, whatsoever.

Q. Now, there are many checks here, according to the list, made to a Mr. Walker for surveying work.

A. Yes, I had Mr. Walker. He did all my surveying, surveying work of surveying lines, I think he did it all. There could have been other people, but he did an awful lot of it.

Q. Did you ever do any surveying?

A. No, I have never done any surveying.

Q. Did you ever advocate or suggest to anybody that the dam up there at Lost Lake should be dynamited?

A. No, I don't remember making such a statement.

Q. Was it ever your desire that that be done?

A. No, I think the dam is very nice.

Q. Now, did you hear the testimony of Mr. Par-

(Testimony of Chet L. Parker.)

rott and Mr. Petersen that you were up there at the Ranger Station on the evening of August 15th?

A. Yes, I heard that. [1400]

Q. Were you up there on August 15th? The 13th, it should be.

A. They said I was there, but I wasn't.

Q. How many times were you ever up at the Ranger Station during the months of August and September?

A. I don't think I was there either of those months.

Q. Were you up there at any other time?

A. I think after that I was there once.

Q. After what?

A. After September.

Q. What was the occasion of your going up there then?

A. Well, as I remember, it is not very clear in my mind, I had another fellow with me. I remember that. And it had to do with ownerships in the lower Columbia—or Hood River valley.

Q. On the 13th, where were you?

A. I was at Lost Lake.

Q. You were doing this—going over this property to determine whether you would take the option?

A. That is right.

The Court: Would you mind asking him more about that? That is an important point, I think.

Mr. Jaureguy: Yes, I do, too.

The Court: Find out what kind of a car he has and whether or not he dressed——

(Testimony of Chet L. Parker.)

Mr. Jaureguy: I was going to take up clothes.

Q. You recall the testimony about your [1401] clothes?

A. Well, I recall the one; it was forest green jacket and shirt and forester's hat. Yes, I remember that distinctly.

Q. I want to change my question, if I may. Do you recall testimony regarding clothes of the man that they identified as you? A. Yes.

Q. Well, now, what about the forest green jacket or shirt or coat?

A. I have never worn a forest green jacket, shirt, overalls or used a forester's hat. I have never owned one. I have never worn one in my life.

Q. You are talking about a forest green jacket and the forester's hat?

A. And pants and everything, I have never worn one in my life.

Q. What kind of clothes would you have had on that day?

A. I would have had a pair of overalls on.

Q. Regular blue overalls?

A. Yes, cheapest kind you can buy. They were probably staked off at the bottoms.

Q. That means——

A. It means you take a pocket knife, cut them off at the bottom so you won't trip in the brush or catch them. I am very doubtful that I had a coat on, being the time of the year it is, but I could have had a coat on.

(Testimony of Chet L. Parker.)

Q. If you had a coat on, would it have been forest green?

A. It would not have been forest green, and if I had a hat on, [1402] it would have to have been a tin hat. Now, I mean tin hat, when I was a boy we referred to tin hats, these canvas hats, not what you call a plain hat now.

Q. Are you referring to heavy canvas, water-proof hats? A. That is right.

Q. What color are they?

A. Well, by then it loses its color. It would not have one. It looks like a wreck.

Q. Those were the clothes you had on that day?

A. Well, I am not sure that I had those clothes on, and if I had a hat on, that is the hat I would have worn, and I certainly did not have any clothes on of forest green at any time.

The Court: What color is forest green?

The Witness: Well, like these foresters wear forest green like a fir tree, I would say would be forest green.

The Court: Did you have a coat of the same type of material as the hat?

The Witness: No, I don't know whether I had a coat on, but I had some jackets, some old jackets. Oh, I got some blue ones. I don't know whether I had it on or not, black and white plaid.

The Court: What kind of a car were you driving that day?

The Witness: I don't remember, sir.

(Testimony of Chet L. Parker.)

The Court: Do you have a late-model car, two-door sedan?

The Witness: No, I do not.

The Court: Did you have one at that [1403] time?

The Witness: No, I did not.

The Court: Did you have a car with a Washington license on it?

The Witness: That I might have.

Q. (By Mr. Jaureguy): That is, did you own one with a Washington license at that time?

A. I might have, but I am not sure.

The Court: Will you tell us what the license number was, of the Washington license?

The Witness: I don't remember, I never did know.

The Court: Did that start out with a letter "G"?

The Witness: Well, I live in Clark County. I don't know whether that is a "G" or "C."

Mr. Jaureguy: Clark County is a "G."

The Witness: It looks like a "C," but it could be a "G," I guess.

Mr. Jaureguy: One reason I say it is a "G" is that the Exhibit, at the time it was introduced yesterday, showed that he had a license number starting with "G," but in Washington they have the different portions of the State have different letters.

The Witness: I think that is the way it is, yes. I think my county has a letter, but I am not sure of that.

Q. (By Mr. Jaureguy): When did you first

(Testimony of Chet L. Parker.)

learn that there was any question about the title to this property? [1404]

A. Well, sometime during the meetings of Title and Trust.

Q. Well, what about when Miller told you?

A. Well, yes—well, he seemed to be a little bit—knew there was a question, but he didn't say much about it. He didn't seem to be too perturbed about it.

Q. So, it was sometime after that that you learned?

A. Well, yes, and Gene Marsh told me it didn't amount to anything, so I——

Q. When did you first learn that the Winans knew there was a question about the title?

A. Well, when I saw some correspondence that Title and Trust showed me.

Q. Were you surprised when you saw them?

A. Extremely so.

Q. That was the first time you knew that the Winans had knowledge of the——

A. Well, absolutely, and in view of this letter, yes.

Q. What do you mean "this letter"? A letter that was in the correspondence? A. Yes.

Q. Are you speaking of correspondence between Winans and the Pacific Abstract & Title Company, when the settlement was made in 1943 and 1944?

A. Well, some letter that the Winans had wrote in to some title company. I thought it was Title and

(Testimony of Chet L. Parker.)

Trust Company, but I presume [1405] now it was some other company.

Q. Well, I don't know what the significance of this other matter is, but I am going to have him explain it anyway. They went into it. Do you remember the testimony with respect to the White truck that Mr. Ellis testified to? A. Yes.

Q. Did you eventually get that truck?

A. Yes.

Q. How did you get it?

A. I bought it and paid for it from Mr. Heider.

Q. And all this other testimony—well, then you had a suit brought that is in evidence here, in order to get possession of it? A. Yes.

Mr. Jaureguy: I have this check. This is the same situation as the other two.

(Check dated July 20, 1950, to Otto Heider for \$1,210, marked Defendant's Exhibit 122 for identification.)

Q. (By Mr. Jaureguy): Of course, you didn't sign this check. Your wife signed it, but can you tell us whether that is the check which you used to purchase that White truck from Otto Heider?

A. Yes, White truck and trailer.

Q. Then were they subject to a mortgage at the time? [1406] A. No.

Q. You think that is it?

A. No, that paid for it. Otto Heider was Ellis' attorney, as I remember, at the time, but I am not sure about that, however.

(Testimony of Chet L. Parker.)

Mr. Jauregui: We offer in evidence this Exhibit 122.

Mr. Strayer: No objections.

The Court: No objection? What is the check for, in what amount?

Mr. Krause: \$1,210, '46 White truck; '46 Walker trailer, signed by Lois Parker.

The Court: Any objection?

Mr. Ryan: I have no objection.

The Court: It may be admitted.

(Check previously marked Defendant's Exhibit 122 for identification was received in evidence.)

Q. (By Mr. Jauregui): I do not know whether you fully explained this Jeep business with Tilbury's concern or not, I mean, your portion of it. Just tell us whether you went in there and wanted to know whether a certain—what it would cost if you turned in your Jeep?

A. Well, it would take me just a minute or two to give a pretty clear picture of it.

I had a 1948 Jeep. They had a 1949 Jeep. Neither one of them were new. I wanted to clear that item up to start in with, and they were going to allow me \$800 for my Jeep, as I remember, [1407] on the other Jeep. That was not too interesting to me, how much they was going to allow me. The interesting part to me was how much they was going to charge me difference that I had to pay. As I remember, when we left there it was going to be

(Testimony of Chet L. Parker.)

five hundred bucks, and I know these people very well to start in with. For 15 years I went to school in that town, and I have known them all my life practically. My brother worked there for 20 or 25 years.

Q. Worked in the town, or worked for them?

A. Worked right there for these same people, and, confidentially, when I go in there we do a lot of bargaining. I bought a lot of pick-ups from them, a lot of cars from them, a lot of parts. I don't know, I would guess, probably forty to fifty thousand dollars worth, and whenever I went in there to buy anything, why, we did a lot of bargaining. Sometimes it would take a month to do a car deal or something, off and on, a half hour at a time when I might be in there, but I came back, and we arrived at a deal, \$450, and normally between models, on used models, \$500 would be a big price. Now, if that would have been a new one I was trading for, then \$500 would have been a very nominal price, I consider, but since both of them were used and mine was in good shape as the one I was getting, and they was only a year later, I figured \$500 was a little strong. I paid them for it. I picked up the Jeep and I sold the same Jeep that I got from them for \$800 a year later. [1408]

Q. There has been some testimony from Parman. Can you——

A. That name was new to me until he come in here.

Q. That witness testified that he called you by

(Testimony of Chet L. Parker.)

phone and made an appointment to meet Stegmann sometime in either March or April, 1952. Do you recall that testimony?

A. I recall that testimony, yes.

Q. Tell us about that?

A. I think I was in Arizona then. I couldn't say about talking to him at McMinnville frequently. I certainly don't remember it at all.

Q. You don't recall any such incident?

A. Absolutely none, whatsoever.

Mr. Jaureguy: I think he has already testified about this Dawes, Smith and Wardell deal. I think he was put on the stand and he testified on that.

Q. Now, I wish you would tell us about your attempted sale of this Lost Lake timber. There has been evidence here, and I think you have already testified that you were planning on selling it to Multnomah Plywood?

A. Yes, I had sold them Bear Creek, what I consider Bear Creek area timber, and they were in an unhappy position log-wise; logging costs were very high, and their log inventory from as much information I could get on it was very low, so I figured they would be a good customer for any timber that I would have that could be adjacent to—anything going in the river anywhere, [1409] whatever it might be, so I met with them and I submitted this deal to them.

Q. Well, now, you are going a little fast.

A. I am sorry.

(Testimony of Chet L. Parker.)

Q. The first thing you did, who was the first man that you communicated with respecting this property, I mean from Multnomah Plywood?

A. Well, the first man was Mr. Smith.

Q. Do you remember, did you talk to him personally or over the phone or by correspondence, or how?

A. I think I first talked to him by phone.

Q. When was that?

A. Well, I don't remember the date.

Q. Well, now, the day that you went up and looked over this property was August 13th?

A. Yes.

Q. Mr. Kenny testified that August 14th, he was up there. A. Yes, he testified to that.

Q. Now, does that refresh your memory of the day you talked?

A. When I first talked to Mr. Smith, I had a hundred—there was another piece up there for him to look at when I first talked to Mr. Smith, and then I told Stegmann, as I remember, I couldn't be there that day, and I told him to take him up there on Lost Lake and show him that piece.

Q. Was that the 13th that you called [1410] him? A. Yes, I think it was.

Q. Do you remember what time of the day it was? A. Well, I think it was in the evening.

Q. You think it was in the evening?

A. Yes, early afternoon.

Q. Would it have been earlier in the day?

A. It possibly could have been, yes.

(Testimony of Chet L. Parker.)

Q. I suppose you testified before what time. I think you testified you didn't know what time you got back from Lost Lake?

A. No, I am not sure about that.

Q. And you do not know whether you called him before you went up or after you got back. Could you have called him from someplace around Lost Lake? You couldn't, could you? A. Well, no.

Q. You would have had to call him from Hood River? A. Yes, I presume that, yes.

Q. All right, then, what was the next step after he went up there and he got his survey——

A. Well, I went to see Smith about—there was a Marsh, a John Marsh was going to sell me, said he had a lot of timber up there. He was going to sell me a lot of it, so I talked generally with this man Smith about the whole area because I had the dump there, and without that dump, couldn't very well take any logs out, and even though it was a public dump, why, still it was controlling factors of getting logs into the river, a considerable amount. [1411]

Q. How was that? You say it was a public dump?

A. Well, it was and it wasn't. You buy your rights in there, and then if you are a large logger, why, you just fill up, and then the small loggers, they have to keep their truck there all day to get to dump, sometimes two days, sometimes they don't get to dump; consequently, they cannot dump their logs, and consequently they have to sell to big operators. That is generally true in that area. Now, in this

(Testimony of Chet L. Parker.)

area, you just can't hardly ship logs out of there without probably two companies like that, from then directly or indirectly, or else you leave them there, so that boom had a big, deciding factor in shipping logs out of the upper Columbia River.

Q. That is the boom that you had either purchased or obtained rights to?

A. I obtained rights, and at the time I did, all the boom pockets were taken up by other companies. I couldn't ship any logs over it, so I told the man I would furnish the money to extend two more pockets, and that would take up all the room he had. I had to do that because there wasn't any other boom place.

Q. Well, now, was that the transaction that Kenneth Abraham testified to? A. Yes.

Q. That was several months before this?

A. Oh, yes.

Q. Was there any connection between getting that boom and buying [1412] the Lost Lake property? A. None, whatsoever.

Q. Then you talked to Mr. Clyde Smith, you say, about this and some other piece of timber that you might have? A. Yes.

Q. And what happened next?

A. Well, as I remember, then I suppose Kenny's report came in, and I gave Smith the proposition what I would do. They owed me some money on Bear Creek. I think it was \$42,000 due either right then or thereabouts. I was not perturbed about getting it, but it was due and I wanted to clean that up.

(Testimony of Chet L. Parker.)

As I remember it, Ray Leonard was purchasing second growth out of that area that I sold him previously.

Q. Buying it for Multnomah?

A. Yes, and, of course, I don't think they had a deed for it. At least, it wasn't paid for yet, so I would release that.

Q. You are talking now of the conversation you had with Smith?

A. Yes, I would release Bear Creek, which would give them the right to sell the second growth, or whatever they wanted to do with it, to anybody they pleased. Then they would pay me \$25,000 cash, and then so much a thousand over a period of a couple years. I think it was \$25,000 in addition to that for every million and a half feet taken off of it, I believe it was.

Q. But was there a gross price agreed upon?

A. Yes. [1413]

Q. Would they get—regardless of the amount of timber they got off of it?

A. Yes.

Q. What was that price?

A. \$180,000.

Q. That is, they would pay you \$25,000 cash in addition to the \$42,000 that you had coming on Bear Creek?

A. Yes.

Q. Have you seen the minutes of that meeting?

A. Yes.

Q. Do you have them in mind now, what they show?

A. Well, pretty near, yes.

Q. I think they are Exhibit 117. Well, then, as a result of your conversation with Mr. Smith, did

(Testimony of Chet L. Parker.)

he decide that it was—what did he decide as to whether or not he thought the company would pay it?

A. Well, he had not been up there yet himself, personally, but he thought it sounded pretty good to him.

Q. But he wanted to go up and see it?

A. Yes, he wanted to go take a look at it.

Q. Before he took a look, did you meet with the Board of Directors?

A. I think I did. I think he wanted me to submit the proposition to the Board of Directors.

Q. Well, you mean with the group? [1414]

A. Yes, I think there was 10 or 12 of them, or so.

Q. Did you meet with them on the day that these minutes say there was a Board meeting?

A. Well, yes.

Q. This was August 20th?

A. It would have had to have been, yes.

Q. There were 10 or 12 there?

A. Yes, I think at least 12.

Q. And you and Mrs. Parker, and then the group? A. Yes.

Q. Was Mr. Johnson there?

A. That I don't remember. I don't believe he was, but I am not sure.

Q. Now, I do not quite understand the significance of this, if there is any, that they owed you \$42,000 on the Bear Creek property referred to in the minutes as the Nestucca River tract. Then it says, "They are willing to apply this \$42,000 to the Lost Lake tract, which, together with the \$25,000,

(Testimony of Chet L. Parker.)

will make a total of \$67,000." What I cannot understand is what difference it would make if you got \$42,000, whether it was applied on this or applied on the other.

A. Well, that would be deferred for a little while. They was in the bite of the line, more or less. They was going to sell to Roy Leonard and they was going to take his money, but it takes time to do those things, and the \$42,000 would be [1415] deferred to act as a down payment on this piece of property and, in turn, as I remember—yes, that is the way it was, and in turn they were to secure any additional amount by a mortgage on the piece down in West Fork.

Q. "Inasmuch as they want \$100,000 applied to this purchase, they are willing to accept the difference of \$33,000 at the time that we would start logging operations."

A. Yes.

Q. So you were getting what you call \$67,000 down? A. Yes.

Q. And then at some future date when they started logging operations, they would pay you \$33,000?

A. Yes, the following July, the following year, I think in July, they figured it would be, thereabouts, as I remember.

Q. Well, this was August 20th? A. Yes.

Q. And would it be practical to log up there, to close this deal and for them to still log the same year?

(Testimony of Chet L. Parker.)

A. No, it would be practically impossible.

Q. And so it would be the next summer before they could log? A. That is right.

Q. And the next summer, therefore, before you would get anything more than \$67,000 out of it?

A. Yes. of course, the \$42,000 I loaned them, you know, actually.

Q. Actually you would get twenty-five out [1416] of it? A. That is right.

Q. If you had not made this deal, you would have got \$42,000 on that Nestucca tract, the Bear Creek? A. Oh, yes.

Q. So you got twenty-five thousand more than you would have otherwise? A. Yes.

Q. And you would not have gotten any more until you started logging? A. That is right.

Q. Then you would have got \$33,000?

A. Yes.

Q. "The balance of \$80,000 would be required of us at about the rate of \$25,000 a month figuring that logs would be removed at a rate of about 1,500,000 feet a month."

A. Yes.

Q. That was agreed upon, was it? A. Yes.

Q. Then they say about you and Mrs. Parker being willing to deposit \$100,000 for their use if they needed it in handling the McFadon tract?

A. Yes.

Q. Can you tell us about that?

A. Well, they had a McFadon tract. I am not too familiar with the McFadon tract, but I do know where it is at, and Mr. McFadon—[1417] they had

(Testimony of Chet L. Parker.)

a—as I understand it a tentative offer on it. Mr. McFadon said he was not going to sell it until 1952, but the first month, the first of that year he would sell it.

The Multnomah wanted all the logs they could get that could go into the plant from anywhere, but they still wanted this down to West Fork for their green end plant which they now had there, and, consequently, just to be sure they didn't get in a bite there, they wanted to borrow. However, that didn't have too much to do with the deal, but it came up at this time. They wanted to borrow, might have to borrow a hundred thousand dollars. As it turned out later, I believe that they didn't buy the McFadon tract until practically another year went by. I can be wrong, of course, on that. That is hearsay.

Q. Then was that about all that took place at that meeting?

A. Yes, then as I remember we broke up, and they wanted me to take them up and show them the property.

Q. They were still there when you left? Were they still there when you left?

A. Yes, I am sure of that.

Q. Then did you take them up and show them the property?

A. Yes.

Q. And who went up that day; do you remember?

A. Well, my son and I went in his car, and

(Testimony of Chet L. Parker.)

Clyde Smith and two other men from the plywood company went up in their car, or some car, anyway. I guess it was theirs. [1418]

Q. Did you see these other two men he testified to, two loggers?

A. I saw their car come in as I was leaving. I didn't stay. I just took them down a path, as I remember, and my son showed them this corner that is out in the water.

Q. Yes?

A. And then we walked back to mine. I think I had the Suburban, but I am not sure. Then as we was leaving, a pick-up drove in with a couple loggers. I didn't recognize them, nor did I say anything to them.

Q. When you go from Hood River to the Lost Lake property, do you go by the Winans' place?

A. Yes, yes.

Q. You went by there that day?

A. Oh, yes.

Q. Did you see Mr. Winans?

A. I don't remember. I don't believe so. I am not sure.

Q. But you didn't go through the woods with them when they went through that day?

A. No, no.

Q. Then what next happened?

A. Well, seems like I called Mr. Smith, I believe, after that, and they—he indicated that he would take it, that they would work a deal—no, I am not sure whether I called him or he called me, but any-

(Testimony of Chet L. Parker.)

way, we made contact, and so he said, okay, they would set an appointment. They would call an attorney, make an [1419] appointment to make up this contract, this agreement, and so I went up to Bledsoe's office with Mr. Smith. I am sure it was Mr. Smith.

Q. Mrs. Parker was with you?

A. My wife was with me, yes, and as we talked about here, that was what Bledsoe was supposed to draw up, a mortgage on the Barbour tract. I am sure it was the Barbour tract, and make up the papers on this deal.

Q. Was the Bear Creek connected with it?

A. Well, intermingled with it, yes, some way or another. Then I left. I think Mr. Smith was still there when we left. Then I had a meeting with Mr. Johnson after that.

Q. Well, I would like you to tell us whether you have any recollection of getting anything from, any written document from Mr. Bledsoe?

A. Yes, I got an onion-skin draft of this thing that we proposed.

Q. What happened to that?

A. Well, it was quite a bit after that, and, as I remember, we threw it away because by that time, why, it was quite obvious that it couldn't be used.

Q. Well, then, thereafter tell us what happened from then on. Eventually you didn't make the sale?

A. Well, I met with Mr. Johnson at his office. I don't remember what date. It was quite late in this thing, but I had learned that—after Mr. Miller had

(Testimony of Chet L. Parker.)

told me this, why, I had got [1420] suspicious, naturally, of the title, and I told Mr. Johnson that I didn't think that I wanted to loan them the hundred thousand dollars, as I remember. I believe later on I told Mr. Smith there was something wrong with the title. I am sure I told Mr. Smith.

Q. Therefore——

A. Well, the deal fell through.

Q. Well, Mr. Johnson, I don't know as—I know about when you and Johnson, if at all, one of you told the other one the deal was off, or anything of that kind?

A. Well, consequently—as I remember, yes. Now, I don't know which way it was. I don't remember the particulars on it.

Q. Do you know whether, whoever called the deal off, was it on account of the hundred thousand dollars or on account of the poor title, or both?

A. Well, it could have been both.

Q. Or something else? A. Yes.

Mr. Strayer: What was the answer?

The Witness: Well, it could have been something else.

Q. (By Mr. Jaureguy): You say it might have been something else? A. It could have been.

Q. Could have been? A. Yes.

Q. At any rate, the deal never did go [1421] through?

A. That is right. I am thankful for that.

The Court: Haven't we wasted a lot of time? If it could have been something else, if the deal could have fallen through because of some other

(Testimony of Chet L. Parker.)

factor, haven't we wasted a lot of time, Mr. Jaureguy, if the deal could have blown up because of some other thing unconnected with the title? There was no firm contract, as I understand it now. I was under the impression, Mr. Jaureguy, that in your opening statement you contended that there was a firm contract between Multnomah Plywood and Mr. Parker, and that by reason of the defect in the title Mr. Parker was unable to comply.

Mr. Jaureguy: I am rather certain I did not make that statement, your Honor.

The Court: Well, I might be wrong.

Mr. Jaureguy: No, I am rather certain——

The Court: I got that impression.

Mr. Jaureguy: ——because I had not been under that impression for many months before I made the opening statement.

There was an offer and there was an agreement, but this thing came up, and so—there could not have been a binding contract until after it was signed. I didn't intend to create any different impression than what it was, that they wanted up there, and they had agreed on a sale. It was to be a confirmation. I am sorry that I gave your Honor an impression——

The Court: Perhaps I am stating it a little stronger and I [1422] am glad to have your explanation because now I remember that you are absolutely right, but what was the purpose of all this testimony now? What does it tend to prove?

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Well, it shows that at this time the officials, at least two of them have already testified, were of the opinion that this was worth \$180,000 and were willing to pay that much for it.

Mr. Krause: What officials?

Mr. Jaureguy: The same as our friend over here got in the testimony of Linville because here is an offer, the offer is enough, the value of property may be shown by an offer that is made.

The Court: Are you through with this witness?

Mr. Jaureguy: No, I have a little more.

(Discussion off the record.)

The Court: We will recess until two o'clock.

(Noon recess taken.) [1423]

Afternoon Session—2:00 P.M.

(Trial resumed.)

CHET L. PARKER

recalled, testified as follows:

Direct Examination

(Continued)

By Mr. Jaureguy:

Q. You have testified this morning about that Jeep transaction with a Jeep that you got from—that trade you sold and following testimony?

A. Yes.

Q. Have you checked the deposit slips to find out what date that was you sold it?

(Testimony of Chet L. Parker.)

A. Yes, I looked at them.

Q. What date is that?

A. Well, it was in December 1, 1951.

Q. December 1, 1951? A. Yes.

Q. Now, I want to hand you Exhibit 110, which purports to be a map of Township 1 South, Range 8 East of the Willamette Meridian. Do you know where I got that?

A. Yes, out of the Metsker book I had.

Q. You gave me a Metsker book, and I took this one out? A. Yes.

Q. How long had you had that Metsker book?

A. Oh, quite some time.

Q. I think you testified that you looked at the Metsker map on [1424] the 13th of August?

A. Yes.

Q. Is this the sheet you looked at? A. Yes.

Q. You say that it had this particular property marked as "Winans"? A. Yes.

Mr. Jaureguy: We offer Exhibit 110 in evidence.

Mr. Strayer: No objection.

Mr. Ryan: No objection.

Mr. Krause: No objection.

The Court: It may be admitted.

(Document, Metsker map previously identified as Defendants' Exhibit 110 for identification was received in evidence.) [1425]

(Testimony of Chet L. Parker.)

Cross-Examination

By Mr. Ryan:

Q. You were questioned—may I have Exhibit 83? Do you have that, that proof of loss or claim, Mr. Buell?

Mr. Buell: 81 and 82, you mean?

Q. (By Mr. Ryan): You were questioned about the ownership of the International, 1948 International truck and Page & Page trailer in which Mr. Stegmann also had some interest. Do you recall how you acquired your interest in the truck?

A. No, I do not. You said that I owned the truck and Mr. Stegmann had an interest also, didn't you?

Q. Yes, that you had some interest in that truck, do you recall?

A. I think I had a mortgage on it, and I am not sure, but I had lots of equipment then, my own, too, and some of them were Internationals.

Q. I am handing you Exhibit 81 which purports to be a Proof of Loss on that truck. Do you recall the circumstances under which that truck was damaged?

A. Well, if this is the one that had the Cat loaded on to it going up part of the road out of control near, well, from the CC Camp on Clarence Creek, then I do recall it.

Q. I would like to have you take a look at Exhibit 48 and in that exhibit at a mortgage from Walter Stegmann to George F. Lund. Would you refer to the serial number of the truck made [1427]

(Testimony of Chet L. Parker.)

out, as listed on the Proof of Loss, International truck? A. HB40017556.

Q. Now, this is one of a series of recorded chattel mortgages contained in Exhibit 48. The one to which I am referring is a chattel mortgage from Walter Stegmann to George F. Lund on an International truck bearing what I believe to be the same serial number. The date of this mortgage is the 13th of March.

Mr. Strayer: What year?

Mr. Ryan: 1947.

Q. Does that refresh your memory in any way as to this particular truck or anything to do with it?

A. I think I know Lund. I am not sure.

Q. Is it possible that you might have acquired an interest in that truck in dealings with Mr. Otto Heider? A. Yes, it is very possible.

Q. Do you recall that at all?

A. No, no, I do not.

Q. Does the check in payment out of this transaction, do you have that, Mr. Buell?

Mr. Buell: No, but there is a copy of it in that file.

Q. (By Mr. Ryan): Who was that made out to?

A. Chet Parker and Walter Stegmann and Caldwell Finance Company.

Q. Do you have any recollection of Caldwell Finance Company or its interest in this truck?

A. By golly, no, I do not. I didn't owe the Caldwell Finance [1428] Company and I never—I don't think I did, anyway.

(Testimony of Chet L. Parker.)

Q. Do you know whether you acquired any interest in this truck through the Caldwell Finance Company? A. It is possible.

Q. Well, were your dealings on this truck directly with Stegmann?

A. Golly, I really don't know, Mr. Ryan. I can't remember about it. I am sorry.

Q. Now, you testified that you went to Lost Lake with Mr. Stegmann on the 13th of August?

A. Yes.

Q. Did Mr. Stegmann remain at the lake with you for any length of time?

A. I don't think he did, as I remember. Of course, a lot of time has went by here, but, as I remember, he left earlier.

Q. You remained, and he left. Do you know where he went? A. No.

Q. Did he tell you where he was going?

A. Well, he might have, but I don't remember.

The Court: Was he alone when you were with him on the 13th?

The Witness: I am not sure, your Honor. It is too long ago, much too long ago to remember.

Q. (By Mr. Ryan): Now, this transaction regarding a White truck which you heard Mr. Ellis testify to, do you remember how you acquired the title to that White truck? [1429]

A. Well, as I remember, my wife gave Mr. Heider a check, and Mr. Heider gave me the title. I sent it in to the State. I got it in my name, and

(Testimony of Chet L. Parker.)

that is that. I guess that is the way it was. I am sure it was.

Q. Do you remember whether Mr. Heider had possession of the certificate of title to that truck at the time of this transaction?

A. No, I never paid much attention to it. I am not sure that day whether I was with my wife when the truck was purchased, when the check was given, or not. Too much time has went by. I can't remember. As far as the certificate of title, I possibly gave him a check. Mr. Heider sent it in, didn't give us anything. I would trust him with that much money.

Q. With regard to this transaction, did you deal entirely with Mr. Stegmann at any time?

A. No, I didn't have anything to do with Mr. Stegmann. I bought the truck from Mr. Heider.

Q. Did we have an exhibit regarding the motor number of that truck?

Mr. Strayer: Yes.

The Court: Won't the complaint filed by Francis Marsh indicate the motor number of the vehicle?

Mr. Strayer: Exhibit 122 is a certificate from the Secretary of State—wait a minute, that is apparently a duplication. 122 apparently was given as your check to Otto Heider as well. No, I am mistaken. I don't know what that exhibit number is. [1430]

Mr. Buell: The motor number is 140A something.

The Court: How much is the check?

(Testimony of Chet L. Parker.)

The Clerk: \$1,210.

The Court: \$1,210. Do you want that check, Mr. Ryan?

Mr. Ryan: In view of his testimony that his wife actually, he believes, handled this transaction, I think it can be more properly put to her, the question.

The Witness: I am sorry, I think I purchased it from Mr. Heider. I think she just made out the check, is what I think. That is, I don't remember distinctly by any means.

Q. (By Mr. Ryan): At the time of that purchase, was it your understanding that Walter Stegmann had any interest in the truck?

A. No, no, absolutely not.

Q. And that the truck was solely Mr. Heider's?

A. Yes, it was my understanding that the truck was at this Ellis Garage. Mr. Heider had it for sale.

Mr. Strayer: At what?

The Witness: Had the truck for sale. In other words, I could buy it from Mr. Heider. All I had to do was pay him for it. That is what I proceeded to do, and that was that.

The Court: Did you go down to the garage to look at the truck before you purchased it?

The Witness: No, I don't think I did, but I am not sure I didn't. I don't think I did, and I might have.

The Court: Well, when you couldn't get possession of the [1431] car, how did it happen you didn't go back to Mr. Heider and tell him that the car

(Testimony of Chet L. Parker.)

that you bought from him was being held by the garage?

The Witness: Well, as I remember, your Honor—it was a truck, by the way, and as I remember, Mr. Heider indicated to me that there was no trouble with possession.

The Court: There would be no trouble?

The Witness: That is right, as I remember.

The Court: After you found that there was trouble, how did it happen that Mr. Heider didn't get the truck for you?

The Witness: Well, he was the attorney for Ellis. There was some—I don't remember. It seems like he said, "Well, I sold you the truck, but I am the attorney for Ellis." So, therefore, somehow or other I went to the Marshes and had them get possession of it for me. That is all I remember.

Mr. Ryan: I have no further questions, your Honor.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Parker, what is the color of the suit that Mr. Jaureguy is wearing? A. Blue.

Q. And the color of the sweater that Mrs. Parker has on? A. Oh, kind of a yellow color.

Q. You see those books right there? What color is that? [1432]

(Testimony of Chet L. Parker.)

A. I am sorry, I don't know which one you are referring to.

Q. Well——

A. There was some light blue ones there.

Q. This one, that is a light blue? A. Yes.

Q. What color is this?

A. That is just a little bit lighter blue.

Q. Would you please hand the witness his deposition and turn to page 182. Turn to page 182, please. That is your deposition taken August 7, 1952, isn't it, Mr. Parker? A. Yes.

Q. All right. The first question: "Starting in June of 1950, how many cars did you own?"

Your answer: "I don't remember. I think at least two.

"Q. What were they?

"A. A Plymouth and a Mercury, as I remember.

"Q. What model Plymouth?

"A. '51, I guess.

"Q. Two-door or four-door?

"A. Suburban."

Q. You remember those questions and answers?

A. Oh, definitely, yes.

Q. All right.

"Q. It looks like a station wagon?

"A. Yes. [1433]

"Q. What color was it?

"A. I don't know. I am color-blind. I wouldn't know."

Q. Was that your answer?

A. Yes, definitely.

(Testimony of Chet L. Parker.)

Q. Are you color-blind?

A. Well, in shades in between, I am, yes, like a peach, whatever that is, and between your solid colors I am color-blind, yes.

Q. The next question:

“Q. Has it the appearance of what a person might describe as a station wagon? A. Yes.

“Q. And your other car was a Mercury?

“A. Yes.

“Q. What year was that?

“A. '50 or '51.

“Q. Do you recall what color that was?

“A. No, I don't recall.

“Q. What model was it, two-door or four-door?

“A. Four-door, I think.

“Q. You had those same cars in July of '51 and August of '51 and September of '51?

“A. I sold the Plymouth, and I don't know whether——

“Q. I am particularly interested in September, 1951. When did you sell the Plymouth?

“A. I don't remember. [1434]

“Q. Was it before or after September 15th?

“A. I don't remember. They had the title on it and the title was transferred. The State would have it, but I don't really remember.”

Q. Those were your answers to the questions that were put to you, weren't they?

A. Certainly.

Q. Now, let us go at this color business a little further. You can identify red when you see it, can you?

(Testimony of Chet L. Parker.)

A. That depends on whether it is a light or in a solid color. If my wife was wearing a yellow and a red, why, then I can tell the difference between the red and the yellow, but if a red and a green light goes on at a stop light, I cannot tell the difference, so there is a difference. I mean, there is a difference between the two. I only know them by position, and it is very confusing sometimes, believe me.

Q. Green you do not have any difficulty identifying, though, do you?

A. No, well, it depends on what it is. If it is a light, I do, but if it is a solid color, I do not.

Q. Well, the green of a fir tree, for example.

A. No, I can tell if it is green or if it is brown, I guess you would say. If the leaves are falling off or nature's red, I am not——

Q. When you were identifying the forest green, you said it was [1435] something like the color of a fir tree, did you?

A. Well, I think it is, yes. Forest green would be like a green fir tree.

Q. You never knew the color of these automobiles that you drive at all?

A. No, I don't remember. There was some funny shades. They would make a blue and just a little off black. They would call it something like this. Well, to me it just—that isn't the way it is.

Q. You do not know now what color automobiles you had at that time?

A. No, but my wife would know. She is not color-blind.

(Testimony of Chet L. Parker.)

Q. Has your driver's license a clause because of you color-blindness as between red and green?

A. Oh, I don't know, but I do remember when I first got my driver's license, they had a color chart, they had numbers on it. That has been some time ago, and my brother was taking his simultaneously, or at least was with me simultaneously, and he could see one number and I could see another one, and, of course, on his I didn't see his number. I don't know how he saw with his or how I seen mine, but they claim it was different.

Q. Are you talking about numbers, now, or colors?

A. Well, the colors had something to do with the numbers, it had round colored dots on the page you looked at, and he would see seven and I would see eleven, or something like that, which [1436] indicated that in between solid colors I was certainly color-blind.

Q. Will you take a look at your driver's license now and see whether there is a clause on it of color-blindness?

A. I am afraid I am an illegal driver. I am afraid I have been——

Mr. Jaureguy: Not if it is an Oregon license, it is not. I am in the same spot as my client.

Mr. Krause: I hope not, Mr. Jaureguy.

Mr. Jaureguy: I am not an expert on color-blind charts, but I know forest green because I had a pair of pants that were forest green.

(Testimony of Chet L. Parker.)

Q. (By Mr. Krause): Your driver's license has no clause on it, has it, Mr. Parker?

A. I am sorry, I only have a temporary license from Washington, State of Washington, and I filled it out. They didn't——

Q. You have not taken an examination in Washington?

A. Well, not anything to do with color. Over there they seem to be perturbed on how good you can see rather than the colors, but I did take one in McMinnville, Oregon, when I first got my driver's license and I was partially color-blind, and when I come to a stop sign, I had to know them by position. I cannot help it, either.

Q. Was your Oregon driver's license clausued because of any color-blindness?

A. That I don't know, but it says in the record that I was partly [1437] color-blind.

Q. Now, Mr. Parker, how many times were you on the property, the Lost Lake property, during the month of August, 1951?

A. Oh, I suppose three or four months. I am guessing at it. I don't know.

Q. Well, you have testified that you were on there on the 13th of August, is that right?

A. That is right.

Q. Were you up there on any date prior to the 13th of August? A. Prior, you mean before?

Q. Before, yes.

A. Well, I was up in that vicinity before, yes.

Q. I am now referring to a period of a month

(Testimony of Chet L. Parker.)

or six weeks prior to the 13th of August. Were you on the property to look at it up there at Lost Lake during that six-weeks period before the 11th or 13th of August?

A. Those 68 acres of Mr. Winans, well,—28 acres that Mr. Winans sold me, or whatever it was, that is what you are referring to, or are we talking about the Lost Lake area?

Q. No, we are talking about the property that you bought there.

A. No, I was not up there before that.

Q. You were not up there prior to the 13th?

A. Not that I remember, no.

Q. Then when was the next date that you were on the property?

A. Well, I went up with Mr. Smith. I was up with Mr. Stegmann, [1438] and I was up with Mr. Winans. I think I was up with my wife, my son and I. I was up with two or three other guys. I don't know how many times altogether.

Q. You were there apparently five or six times, at least, during the month of August, then?

A. I don't know whether it was all during the month of August or not, but I think so.

Q. Well, according to the dates that you have testified to, you had the 13th, and then were you up there on the property on the 18th on the day on which the Election to Purchase was made?

A. I don't think I was. I don't know.

Q. Were you alone when you went up there on the 18th of August?

(Testimony of Chet L. Parker.)

A. I didn't say I did go up, sir, on the 18th of August. I don't know. I might have. I don't remember. Consequently, I don't know whether I was alone or not since I don't know whether I went or not.

Q. Well, were you up there on the day on which the option was exercised, the Election to Purchase was made? A. I don't think so.

Q. You were not there?

A. I don't think I was.

Q. Then you were up there on the 28th, because that day you had gotten the map down here and took it up there; is that right?

A. Well, I don't know whether that was the date or not, whether it was that date [1439]

Mr. Jaureguy: Pardon me, there is evidence that it was the 29th.

The Witness: That is what I thought it was, was the 29th.

Mr. Krause: Pardon me, the 29th.

Q. Do you have your diary with you there, Mr. Parker? A. Well, I have——

Q. Look at the 28th, and you will find according to your memo you were up there on that day.

A. Yes, it says that I was on there on the 28th. It says I stayed all night at The Dalles, Oregon, Motor Hotel, which I did.

Q. So you were up there on that day?

A. Well, I am pretty sure sometimes a day or two would go by and I would write this down. This was for my own information.

(Testimony of Chet L. Parker.)

Q. Now, was it the 28th on which you went into this engineer's office to get that chart?

A. Well, I would have to get the checks, sir, to remember what date it was. I think it was the 29th. I am not sure.

Q. The 29th? A. I am not sure, though.

Mr. Jaureguy: The date of the check, if that is what you want to know, is the 29th.

Q. (By Mr. Krause): Now, I would like to call your attention to the 18th of August again. A moment ago you said you were not up there on the 18th on the day on which the Election to Purchase was made. [1440]

A. I am sorry, I said I did not know whether I was up there or was not.

Q. Well, I referred not only to the date but also to the date on which the Election to Purchase was made, and you said you were not up there.

A. I did not say I wasn't up there. I said I wasn't sure whether I was up there or not.

The Court: Are you talking about the Lost Lake property, or does that include Mr. Winans' home?

Mr. Krause: Oh, no, no, I am just—oh, I may have confused the witness on that. I am sorry.

Q. When you said you did not know whether you were up at Lost Lake, I mean, you didn't know whether you were up there on the 18th, you referred to that you did not know whether you had been on the property that day; is that right?

A. On this Lost Lake property, yes.

(Testimony of Chet L. Parker.)

Q. At that Lost Lake property.

A. That Winans supposedly owned.

Q. Now, would you turn again to August 28th and read your notes on what you did on the 28th?

(Witness reads diary.)

Q. Now, you say there: "I and Myron and Walt Stegmann drove to Lost Lake so I could explain to Walt on the ground that I did not want Winans to get any timber in their reserved area and for him to try and run the lines accordingly." [1441]

You took Stegmann up there to the property to show him what part you would agree to could be reserved for Winans; is that right?

A. Well, I didn't want to get any timber in on it, I didn't, on the reservation.

Q. I understand that you have given your reason for it, but you made a special trip up there with Stegmann so that you could show him what part you would consent to as the reserved area?

A. Well, yes, more or less.

Q. Well, that is what you said in your diary, didn't you, Mr. Parker?

A. Well, you just read it, yes. I said in my diary I didn't want them to get any timber in that reserved area, sir.

Q. Yes, but whatever it says here is correct, isn't it?

A. Well, it should be.

Q. Now, Mr. Parker, what is your net worth?

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Object to that as incompetent, irrelevant and immaterial.

The Court: Are you suing for punitive damages?

Mr. Krause: We certainly are suing him for damages, punitive damages.

Mr. Jaureguy: I take it that they have to show that there is ground for punitive damages before they can go into net worth of a man, not merely allege that they want it.

The Court: Well, I think probably that this would be more [1442] proper after you put on your case, and then you could call him at that time. This is not proper cross-examination.

Mr. Krause: Well, I recognize that it might not be proper on cross-examination and he might be my witness at the moment although he is an adverse witness, but otherwise—there is no prescribed order in which the testimony has to go in that I know of.

The Court: Well, I am going to sustain the objection now with leave to renew your request after you put on your case on the question of damages.

Mr. Krause: That is all.

The Court: Mr. Strayer?

Cross-Examination

By Mr. Strayer:

Q. Mr. Parker, when you testified on your deposition that you did not know what color your car was, were you being entirely frank?

A. Sir, I don't remember what color it was. I have—I buy a lot of vehicles, and actually even if

(Testimony of Chet L. Parker.)

I knew at the time I owned it, I would not be able to tell you. I can't even tell you the color of my car I have now.

Q. Well, your deposition was taken in the summer of 1952 regarding the color of a car that you had been using the previous August and September, isn't that right?

A. Well, as I remember, yes. [1443]

Q. Yes, now, were you being entirely frank in saying that you did not know what the color of that car was?

A. Well, did you want me to answer true, or was it yes or no, that I did or didn't? Could I say that I positively knew the color or could I say that, well, maybe it was some color or it might have been some other color? Golly, I mean, I am not familiar. This is the first deposition in my life I have ever taken. I thought I was supposed to just answer the questions yes or no. I was told to.

Q. In other words, then you did have some vague idea as to what the color was, but you answered the question the way you did because you did not know? You answered the question: "What color was it?" Answer: "I don't know, I am color-blind, I wouldn't know."

A. Well, I am color-blind, and I didn't know.

Q. Well, now, may I ask you, then, how do you know you do not have a green jacket of some kind or a green coat?

A. Because I have never purchased a green jacket for myself.

(Testimony of Chet L. Parker.)

Q. How do you know, if you are color-blind?

A. Well, when a sales person gives me green, why, then, it is green. Furthermore, I can—I can tell black and white and solid colors I can tell.

Q. You mean you ask a salesman the color a jacket is?

A. Well, they voluntarily say, "This is green; this is blue," or something. Furthermore, if I go along side of a fir tree, I can [1444] certainly tell the difference.

Q. So your testimony that you do not have any green jacket is based on what the salesmen told you?

A. Well, not in particular, but I have not any green jacket.

Q. Do you happen to own any, what do you call these jackets that practically every timberman has? Do they call them timber cruiser's shirt, or something of that kind, cruiser's shirt?

A. Cruiser's what?

Q. It is a very dull green color. Well, you have seen many of them, I am sure, have you not?

A. I have seen what they call forester's clothes. They are green. They tell me they are green. They must be green, and I do not own any like that.

Q. Have you ever been to a meeting or a convention of loggers or timbermen? A. Yes.

Q. Now, the kind I am talking about is a, well, the jacket is kind of a combination shirt and jacket. I think they refer to it either as a timber cruiser's shirt or timber cruiser's jacket. Do you know what

(Testimony of Chet L. Parker.)

I am talking about? A. Well, I am sure I do.

Q. You have never owned one like that?

A. I do not personally, no.

Q. Now, you say if you had been wearing a hat, you would have been wearing a tin hat? [1445]

A. I had been wearing up here—now, let us keep this tin hat business straight. This tin hat I am referring to, what the old loggers call a tin hat, that is a canvass hat. It is not a tin hat, but they call it a tin hat.

Q. Does it look like tin?

A. Well, it gets as hard as tin.

Q. I am trying to find out, does it look like tin hats that these loggers wear out there in the woods?

A. No, that is why I am trying to clarify that. Absolutely it did not.

Q. Is it shaped like those?

A. No, no, they get to be every shapes you can imagine.

Q. There is not anything particularly distinctive, then, about the hat you were wearing?

A. Only it was, one was what they commonly call a tin hat. Loggers refer to it as a tin hat.

The Court: As a matter of fact, Mr. Parker, they have not sold this kind of hat for nearly fifteen years?

The Witness: They still sell them, sir.

The Court: You mean darker brown ones that are absolutely stiff? You make trousers of them and coats?

(Testimony of Chet L. Parker.)

The Witness: Yes.

The Court: In the last fifteen years, haven't they changed the model and used a soft, pliable canvas which is waterproof?

The Witness: Yes, and now they have them again, sir. [1446]

The Court: They used to be manufactured by Hirsch-Weis, weren't they?

The Witness: A lot of them were.

The Court: I used to sell them.

Mr. Jaureguy: I think I bought one a year ago.

The Court: It is a real stiff one, and they make it in coats and trousers.

Mr. Jaureguy: I have the trousers, too.

The Court: You have the trousers?

Mr. Jaureguy: I did a year ago. They do not fit me now.

The Court: I have never seen them for more than 15 years.

The Witness: However, I believe my hat is pretty close to that, though.

Mr. Jaureguy: I bought mine in Eugene.

Q. (By Mr. Strayer): Well, now, did I understand you to say, Mr. Parker, that you had at some time or other been in the Parkdale Ranger Station on some other matter?

A. Yes. Now, I am not sure that I was in there, but I thought I was.

Q. Well, now, when do you think you were in there?

A. Well, I am sorry, I can't remember. My mem-

(Testimony of Chet L. Parker.)

ory is not that good. I would have to get some event or something that might connect me to it. I cannot—it is not clear in my mind.

Q. Well, do you think it was in 1951?

A. Well, I think maybe it was, but I am not sure. [1447]

Q. What business were you on when you went in there?

A. Well, it would have to be something under timber, I think or maps, or something like that.

Q. Do you think it might have been in August of 1951?

A. No, no, I am sure it wasn't in August.

Q. Well, was it before August or after August?

A. Well, I am sorry, I can't remember.

Q. You are sure it was not August, and you do not know whether it was before or after August?

A. Well, the reason I am sure it was not August is because it referred to what I have had in August. Otherwise it could have been any month, any day. My memory is not good enough that a year can go by and I can remember where I was exactly on that particular day. I am sorry.

Q. Have you taken the entries on through your diary to see if you can find out when you might have been in there?

A. I have read it over some, but I do not seem to find the information.

Q. You found no entry of your ever having gone to the Parkdale Ranger Station?

A. Well, I was not particularly looking for the

(Testimony of Chet L. Parker.)

entry of going in there or not looking for one either.

Q. On the occasion when you did go there, did you meet either Mr. Parrott or Mr. Petersen?

A. Well, sir, I am not sure whether I did go or didn't go, but [1448] I have seen the tall fellow here, that I think—however, my memory certainly is not as good as his. I think I have seen him, but I am not sure where, but maybe that is—since he was up in that area maybe. I am sure if he had been in a crowd I would not have recognized him.

Q. You have no recollection of ever having met the other man?

A. No, I don't think I have ever seen the other fellow before.

Q. On this occasion when you think you went up to——

A. Pardon me, which other man are we talking about?

Q. We have two Rangers, one was Mr. Parrott and one was Mr. Petersen.

A. Well, the round-faced fellow that was here once, I have seen him once before and talked to him once.

Q. You are talking about Mr. Holtby; are you not? A. I suppose I am. I don't know.

Q. I am talking about Mr. Petersen and Mr. Parrott, the two men who testified that you came into the Parkdale Ranger Station on August 13th and talked to them.

(Testimony of Chet L. Parker.)

Now, had you ever met either of those men before?

A. I think this tall fellow I have seen before, but I am sorry, I don't know where or under what circumstances, and I am not sure that I have ever seen him before.

Q. Well, was anybody with you when you went up to the Parkdale Ranger Station?

A. I am sorry, I don't know [1449]

Q. You have no recollection of that?

A. Well, it seems like I went up there, but I am not sure about it.

Q. Do you know where the Parkdale Ranger Station is?

A. Well, I think so. It is in Parkdale.

Q. What route do you take to get up there?

A. You mean the number of the highway?

Q. No. A. I wouldn't know that anyway.

Q. Let us start out this way. You know that when you are going to Lost Lake you take the road from Hood River to Dee, do you not, and you turn off before you get to Dee; isn't that right?

A. Well, I suppose it is. You have probably been there more than I have.

Q. As a matter of fact, I have never been up there. I am trying to find out from you.

A. I am not sure you are right, or I am not sure you are wrong.

Q. Isn't it also true that in going to Parkdale Ranger Station instead of turning off on to Lost Lake, you go right on up the road into Dee, go clear

(Testimony of Chet L. Parker.)

to the end of the road, and that is the Parkdale Ranger Station?

A. It could be. I am a little vague in my mind where it is at. Doesn't the highway—oh, golly, there is so many of them. Isn't there one up there, the Mt. Hood Loop highway, that goes near Dee or some other—— [1450]

Q. I could not tell you, Mr. Parker; I could not tell you; I could not help you.

A. I was only trying to help. I am sorry.

Q. You have heard the testimony about two men in there about 5:45 p.m., August 13th, interested in this particular timber, the Winans' tract of timber at Lost Lake. Now, while you were at Lost Lake, as I recall your testimony, you were there nearly all day. Did you see anybody looking at the Winans timber or the Lost Lake timber, either the 40 or the 25 acres?

A. There was a correction on that on my deposition, sir, as to how long I was there.

Q. Irrespective of how long you were there, you were there for four or five hours, were you not?

A. I was there for some time.

Q. Didn't you see anybody looking at that timber while you were there?

A. Looking at this same timber?

Q. Yes.

A. Well, not that I remember of, offhand.

Q. That is, you mean to imply that you saw someone looking at some other timber that day?

A. No, my recollection of that, I don't know—I

(Testimony of Chet L. Parker.)

mean, you see so many people up there, but I am sorry, I can't.

Q. You didn't see many people on August 13th, did you?

A. I don't know which date it was, but sometimes you go up [1451] there, and there would be thousands of people up there, just people everywhere. Behind every tree and behind every bush there would be somebody, and I don't remember which times it was, but at times there was a tremendous amount of people up there.

Q. Well, now, do you have any notion who it might have been that went in to the Ranger Station on August 13th to talk about that property?

A. I have——

Q. What? A. Pardon me?

Q. Do you have any notion who that might have been?

A. Well, of course, even if I had an idea, I might have an idea who it was, I had no—I don't know, it wasn't me. That is about all I can speak for myself.

Q. Well, has anyone told you it was him that was there? A. No, I don't believe so.

Q. Do you have any information on it at all?

A. No, not anything clear at all.

Q. Well, do you have any idea at all?

A. Well, of course, since Stegmann left me, naturally, I think maybe Stegmann could have been there. I mean, I am influenced by that. I don't know whether he was or wasn't. I wasn't with him.

(Testimony of Chet L. Parker.)

Q. Now, Mr. Parker, you don't mean to tell me that you have not asked Stegmann if he was there, have you?

A. I have not discussed this thing since it started, as I remember, [1452] discussed this trial with Mr. Stegmann.

Q. Or before? A. Before the trial.

Q. Or at any time?

A. Well, he came at one time to get some papers from me, but I never asked Mr. Stegmann.

Q. The question is this: Do you mean to say that Mr. Stegmann has never discussed with you whether or not it was he that was at the Parkdale Ranger Station on August 13th?

A. Not that I remember, no.

Q. Now, on this White truck that you bought, you paid, what was it, \$1,210 for that White truck and Walker dual-axle trailer? How did you find out that Mr. Heider had that truck for sale?

A. That I don't remember. In fact, when this thing came up I didn't even remember of buying it.

Q. Well, did you have any information that that truck had been operated by Mr. Stegmann previously? A. Well, Heider might have told me.

Q. Stegmann might have told you, too, mightn't he?

A. Well, or Willamina Lumber might have told me. It seemed—I was up to Willamina Lumber a lot. I don't think Stegmann told me, however.

Q. Well, did you know that your wife, Mrs.

(Testimony of Chet L. Parker.)

Parker, had been down talking to Mr. Ellis to find out how much Mr. Ellis' bill was?

A. Well, she naturally could have been. It seems like Willamina [1453] Lumber had something to do with that, but it is not fresh in my mind by any means.

Q. Was it your understanding that the truck was owned outright by Mr. Heider?

A. Well, I bought it from him, and I paid for it. I figured he had a good right to sell it to me.

Q. Did you figure that it was a pretty good buy at \$1,210?

A. Yes, sir, or I would not have bought it.

Q. As a matter of fact, how much was it worth, Mr. Parker?

A. Well, that is speculative, sir. That was a bad year. That was a terrible year to sell or give any logging things away in the first part of it. The first part of that year, for example, I knew of a pretty new Diesel, intact, that sold for \$5,000 to Axel Erickson that year. I think it was Axel Erickson that was out here for Western Equipment. That same truck today would probably sell for \$20,000 in the same condition when it wasn't what you would say an exceptional bargain by any means.

Q. What do you think the fair market value of that truck and Walker trailer was on July 20th, the date that you bought it from Mr. Heider?

A. Well, I felt that I paid about all it was worth.

Q. \$1,210 for the truck and the trailer?

(Testimony of Chet L. Parker.)

A. Yes, because for good evidence on that thing I don't think Heider would give me anything, and he certainly would know what the truck was [1454] worth.

Q. You have just recently sold that truck and trailer; have you not? A. No, not recently.

Q. Well, let us have that certificate from the Secretary of State. While you are looking for it, Mr. Parker, how much did you sell it for?

A. I said it seems like it was three thousand. By golly, I don't know. I didn't get any money so I don't know how much it was. I don't know—when you say you sold it, do you mean I really did? I practically gave it away. I didn't get any money for it, so I guess I really gave it away.

Q. Well, the certificate from the Secretary of State states: "The above title has been received in this office endorsed for transfer to Civic Lumber Company, 18236 Northeast Glisan, Portland 16, Oregon, showing a lien in favor of Chet L. Parker, 901 East 26th, Vancouver, Washington. The title is in the process of being transferred to Civic Lumber Company."

So, apparently, this was in the process of transfer on January 21, 1953, the date of this letter, so the sale has been quite recent, has it not, Mr. Parker?

A. No, it has not. It has been three or four months ago.

Q. You don't remember what——

A. Maybe longer, I don't know; maybe five, four or five months ago.

(Testimony of Chet L. Parker.)

Q. You do not remember how much the consideration was for that? [1455]

A. Well, I didn't get any money down on the deal, and if it ever hauls any logs, I might get whatever the purchase price was. There is a contract on it somewhere. I think it was \$3,000 or something, and in the meantime, if they just junked it, I got nothing.

Mr. Strayer: Have you got that here?

Mr. Jaureguy: I will look for it during the recess. I am getting a lot of scolding here for lots of documents that my clients want in their possession, turning them all over. I am wondering if we have to do this.

The Court: Well, they will all be returned after the case is over, and if this document is offered and your client wants it, a copy will be made and substituted.

Mr. Jaureguy: I anticipate that from time to time I will have to come up and get permission to take a check or something, and we could substitute a copy.

The Court: That is perfectly all right.

Q. (By Mr. Strayer): Without taking the time to go through this in detail, it appears that on August 11, 1952, you sold it. Apparently the purchase price of it is \$3,000 to be paid within 8 months; is that right, and it apparently is to be paid off by so much a thousand on logs?

A. Yes.

Q. Now, you purchased that from Mr. Heider

(Testimony of Chet L. Parker.)

on July 20, 1950, and on July 22, 1950, you sent your title in for transfer. On [1456] July 24, you demanded possession of it, and Mr. Ellis refused to give the truck to you, and is it your testimony that you then went to see Mr. Heider about getting it, or did you go to Mr. Marsh?

A. I don't know, it seemed like my wife—I dislike to put all the blame on her—but it seems like she—I was logging then, as I remember, and during the day time she took care of any of those things.

Q. Did Mr. Stegmann, by any chance, use that truck after you got it?

A. For any of his own business?

Q. I don't care, for any business, did he, by any chance?

A. I had it parked there at McMinnville, and everybody practically used it but me. The reason I say that, my brother would take it and park it over to his place and use it, but it was my truck. I don't think it was used but very little after I purchased it, maybe two or three trips.

Q. How does it happen, Mr. Parker, that you never took any depreciation on that truck in your income tax return?

A. Well, that I don't know. I think if we sold some other car, then—of course, I am not an auditor, but, as I remember, if we paid some cash for something and then—we would not have to take depreciation, as I remember. In other words, you would not have to take it. You could keep it and

(Testimony of Chet L. Parker.)

then if you realized the same amount, or whatever you realized, why, that would be all [1457] right.

Q. I notice that, according to your returns, you were quite meticulous in taking depreciation on your equipment, in your, on your Ford and on your Mercurys, on your Ford pick-up and Jeep, your attachment, even on a desk and chair here you took depreciation.

A. Yes, but there was an awful lot of items I didn't take depreciation on, besides the White truck.

Q. Now, when you got that truck from Mr. Heider, did you get a bill of sale or anything of that kind from Mr. Stegmann?

A. I don't remember at all.

Q. Did you notice that the certificate of title was in the name of Mr. Stegmann?

A. I never paid a bit of attention. I don't know whether it was or it wasn't.

Q. You left that all to Mr. Heider?

A. I gave him a check, as I remember. Well, I don't know whether I even gave him a check. I think my wife gave him a check.

Q. Now, on this Jeep deal, do you remember how much Tilbury Motors wanted for that Jeep pick-up?

A. Pardon?

Q. Do you know how much Tilbury Motors wanted cash for the Jeep pick-up?

A. No, I don't think I ever asked them that.

Q. All you asked—all you dickered about was

(Testimony of Chet L. Parker.)

the difference [1458] between your Jeep and theirs; is that right?

A. That is what I was mostly interested, how much money it would take.

Q. How did you arrive at the valuation in your income tax return on the Jeep that you put down?

A. I don't think I arrived at it, I don't know——

Q. I assume you probably gave the information to your accountant to determine; did you not?

A. Well, my wife and I probably did, or else he established a fair market value for it, or something.

Q. I notice that you—you stated the cost is \$1,392.71 for the Jeep pick-up. You have no idea how that was established?

A. No, because after we got it, we put stuff on it, sir, we put bumpers on it. We put a winch on, as I remember. There was several items, so I suppose that it accumulated, I don't know. Each item I put on it, I suppose, could be added to its value.

Q. Well, your income tax return apparently reflects the cost to you at the time that you got it. Whether it does or not, I don't know, of course.

A. I do not, either, sir.

Q. Do you know whether that \$1,392.71 includes value of the old Jeep that you turned in? I suppose it probably does, does it not?

A. Well, I suppose.

Q. Is it your testimony that your negotiations bogged down because you say that they wanted \$500 difference, and you only wanted [1459] to pay \$450?

(Testimony of Chet L. Parker.)

A. Well, finally I got them down to five hundred, as I remember, and I don't think I made them an offer of \$450 right then, but bear in mind I am not—it is not absolutely clear to me. That is as I remember.

Q. Well, now, what do you remember about Mr. Stegmann's interest in buying your old Jeep? Did he come around to look it over?

A. I do not. I never saw him, as I remember, at my place.

Q. Did he ever discuss with you his desire to buy your 1948 Jeep?

A. Not mine, but it seems like there was—he was looking for one, or something, once.

Q. Did you have any idea whether he was going down to Tilbury's and was going to make an earnest money deposit on a contract to buy your 1948 Jeep?

A. I don't even know whether he did make a deposit to buy my Jeep because I still owned the Jeep and, consequently, anyone that bought it from me would have to buy it from me, I presume.

Q. All right, Mr. Parker, but did you have any idea that he was going down to make an earnest money deposit to buy that Jeep?

A. You mean before I went to see the same Tilbury's place there?

Q. Before you bought your 1949 Jeep?

A. Oh, no, I had no idea he was going down there.

Q. Did you find out afterward about it?

A. Well, now, I am not sure I did or I didn't.

(Testimony of Chet L. Parker.)

Q. Did it come to you as a great surprise when it came out in [1460] this trial?

A. That is not quite the word for it.

Q. I assume you did know about it?

A. I say, that is not quite the word for it, sir. I was very angry about it.

Q. When were you angry?

A. When it came out in the trial.

Q. Well, you were not surprised then?

A. Well, I didn't have time to be surprised.

Q. You do not know whether you had heard about it before that or not?

A. Well, it seems like there was casual mention of it once, but I don't remember.

Q. Did Mr. Stegmann ever tell you about having made this \$50 earnest money deposit?

A. He might have, but I don't remember that, either.

Q. Do you remember whether or not you paid him the \$50?

A. No, I am sure I didn't pay to him a \$50 to pay on this Jeep.

Q. Do you know what that \$50 check was for on the 29th of November, I believe, 1950?

A. Well, I don't know that I gave him a check, a \$50 check, on the 29th of November, 1950.

Q. Well, let us assume that you did. The check is in evidence here now. Assume for the purpose of the question that you did give him a check for \$50 on November 29, 1950. Do you know what [1461] it was for?

(Testimony of Chet L. Parker.)

A. Well, it may have been for some rigging. I bought some rigging from Mr. Stegmann. I believe I had my D-8 then. I can tell from the income tax return. I believe I had my D-6 and D-8 and my Peterbilt truck, and he had some rigging around, and, as I remember, I think I purchased some rigging from him.

Q. You would think that was in payment for rigging?

A. It could have been because I do know I bought some rigging from him.

Q. You say you were in Arizona at the time that Mr. Parman testified that he called your brother's house?

A. I say I think I was.

Q. What makes you think so?

A. Because it was warm that time of the year.

Q. When did you go to Arizona?

A. Well, I think it was in December.

Q. Of what year?

A. 1950, I believe it was. I don't know—1951, I guess it was, 1951.

Q. You went to Arizona in December of 1951. When did you come back?

A. March, I believe.

Q. March of 1952?

A. Yes, I believe that is the way it is.

Q. Who handled your various timber purchases while you were away? [1462]

A. I don't think I purchased any, sir.

Q. Didn't you buy that Northwest Door timber?

A. Well, I bought it in March, I think it was, as

(Testimony of Chet L. Parker.)

soon as I came back. I believe I bought it in March.

Q. Have you any idea who it was that your brother might have put on the phone at his house that represented himself as Chet L. Parker?

A. Well, I am very doubtful if my brother did such a thing.

Q. Now, on this negotiation that you had with Multnomah Plywood, isn't it true, Mr. Parker, that Multnomah Plywood decided not to buy that timber before there was any discussion about this title defect?

A. Well, it is not too clear to me. Multnomah Plywood was up there in September looking at this property a long time after this and I——

Q. Your meeting with the Board was on September 20th?

A. September—October—in October. Wait a minute. Let us see now.

The Court: August 20th.

Mr. Strayer: August 20th, I beg your pardon, and I believe late in—your testimony is they were up there in September or October?

A. No, I believe it was September they were up there looking at it.

Q. When was it that you took Patrick Lumber Company up there? [1463]

A. I don't know. I would say it was possibly in September.

Q. Well, your diary shows that date, doesn't it?

A. It shows on the ninth month, eighteenth day of 1951.

(Testimony of Chet L. Parker.)

Q. September 18th? A. 18th, I guess it is.

Q. September 18th? A. Yes.

Q. Now, on the 17th I notice that you also showed it to Vancouver Plywood, Mr. Olson of Vancouver Plywood? A. Yes.

Q. Now, do you mean you were still trying to sell this plywood to other people although you still had pending negotiations with Multnomah?

A. I was not sure they was going to go through with the deal. I had lost ten thousand bucks on a deal before with them and where I could have sold for more money.

Q. You knew that any kind of a deal with Multnomah had to be approved by their Board of Directors; did you not?

A. Yes, and I presumed they was all there when I talked to them on it.

Q. What is that?

A. I presumed they was all there when I talked to them.

Q. When was it that they were all there?

A. I don't know, that one night I was down there to see them.

Q. On August 20th? [1464]

A. Yes, August 20th.

Q. Well, did you understand that a binding contract had been made, that they had approved the sale right there and then?

A. Well, I say I thought they were all there then.

(Testimony of Chet L. Parker.)

Q. Let us assume they were all there. Did you understand that they had agreed to buy the property?

A. I was led to believe that if they approved it the following time, the two directors, that would be a deal.

Q. Well, but they expressly reserved the right to go over, look it over and make up their minds, didn't they? A. Oh, yes.

Q. That was right in their minutes?

The Court: I think that is enough on that point.

Mr. Strayer: All right, your Honor.

Q. Now, this boom you had out there, you sold that boom in the fall of 1951; did you not?

A. As I remember, yes.

Q. I would like to get straight in my mind, if your Honor will bear with me a moment, I am not clear in my mind how that proposal was to be handled with Multnomah Plywood. Correct me if I am wrong on this summarization, Mr. Parker.

Your proposal to them was that they were to pay you \$25,000 in cash, plus approximately \$42,000 that was due on your Bear Creek timber, paying that amount down; secondly, the payment on the Bear Creek timber would be deferred until a later date and [1465] would be secured by a mortgage, am I right so far?

A. I think that is the way it was.

Q. Yes; and thirdly, that the balance of the \$33,000 would be paid to you in cash before the timber was cut, making a total payment to you of

(Testimony of Chet L. Parker.)

\$100,000, and then a balance of \$80,000 would be paid as the timber was cut?

A. You have not got it all in there, but then that is generally, I guess, what it is.

Q. Now, your diary, I notice, says that the balance of \$33,000 would be paid—I believe you put it, will be carried until next year. Is that intended to mean the same thing, that it will be carried until the timber was logged?

A. No; until it was cut. They couldn't cut during the wintertime, so it would be cut next year. Of course, they could cut it if they wanted to before then, at any time.

Q. I understand, but it was your understanding that it would not be cut until the following July, didn't you say?

A. Well, they wanted that exception, that they might not cut any until that time, as I remember.

Q. Now, is it your recollection, you say you had an onionskin copy of the contract that Mr. Bledsoe prepared. Is it your recollection that that contract outlined the terms substantially as I have summarized them here?

A. Well, of course, it was two pages, sir, and I don't remember, but generally [1466] speaking, I——

Mr. Strayer: I think that is all.

Mr. Jaureguy: That is all.

(Testimony of Chet L. Parker.)

Examination

By the Court:

Q. I am going to go back to that tin hat, also, Mr. Parker. A. Yes, sir.

Q. You say that this was that stiff kind, and the technical name for that is "aqua-pel," isn't it? Do you remember the color of that hat?

A. Well, it was so darn dirty, filthy, greasy, and stuff.

Q. How many years had you had it?

A. Oh, a long time, sir. I still have it.

Q. You can tell colors; now, can you, if they are solid colors?

A. If they are just absolutely distinctive, I can tell.

Q. Mr. Parker, I sent in for an inquiry just a minute ago to find out what colors they make in them. I thought they used to make them in brown. I have not seen them for years. There is only one color made for that, and that is solid green. Do you think that your hat was solid green color?

A. No, absolutely not. In fact, I don't like to differ, but when I was at Medford we bought one like it, and I am sure it was not green.

Q. You are talking of the hard, water-repellant clothes?

A. The clothes when they are dry is pliable. When they are wet they will stand right up. You jump out of them in the morning, stand right up against the wall. [1467]

(Testimony of Chet L. Parker.)

Q. Now, did you have your coat made out of the same material?

A. No—wait a minute, I am sorry, I have a raincoat like that.

Q. But the raincoat you have is made out of softer material, isn't it?

A. No, it will stand right up when it gets wet.

Q. Do you know what they call that? Is that what they call Tintex?

A. I am sure not, sir. It is canvas.

Q. I mean, the trade name, Raintex or Tintex?

A. I am sure it is not.

Q. The manufacturers say they only make that in one color now, and that color is green.

A. We are talking about two different things here, without a doubt.

Q. The hard one, which is known as Tinclothes, the message says at one time they made Tinclothes in brown. The new color is a shade of solid green. They no longer make brown shades. That is the hard one.

Now, in the softer one, the message is that the Raintex clothes are all made in green. Now they do not make brown at all except that there is one brown hunting coat, a number which is carried only by the better stores and not by the general run of stores.

So if you had a coat of that kind, could you tell whether it was green or not? [1468]

A. Well, I have had it for a long, long time. I have had this coat, hat and pants, and I didn't, sir,

(Testimony of Chet L. Parker.)

have very much of the habit of, in August, wearing my tin raincoat and this old hat I had. I used to do the work almost naked when I was a highclimber.

Q. That was hard, though, the old tin-type hat?

A. That is right, a hard one.

Q. It would be very unlikely you would be wearing that in the month of June or August?

A. I don't think I had a hat on, but I am not sure I didn't have a hat on.

Q. Did you have a different kind of a hat, not a water-repellant hat, that you used in the woods?

A. No, I could only—I only have afforded two hats, a dress hat and that old hat.

The Court: That is all.

Mr. Jaureguy: That is all. [1469]

* * *

LOIS PARKER

recalled to testify in her own behalf, having been previously sworn, was examined and testified as follows:

Mr. Jaureguy: If your Honor please, I have another one of these documents.

The Court: Have it marked.

Mr. Jaureguy: This is a copy of one we have in evidence.

(Carbon copy of letter from Title and Trust, Hood River, Oregon, to Chet L. Parker, dated August 15, 1951, marked Defendants' Exhibit 123 for identification.)

(Testimony of Lois Parker.)

Direct Examination

By Mr. Jaureguy:

Q. Mrs. Parker, I am handing you Exhibit 123, which is a carbon copy of the title report from the Title and Trust Company on this property, and ask you whether, when you were with Mr. Abraham on the 11th of September, 1951, you had that with you?

A. Yes, I did.

Q. What did you do with it?

A. I gave it to Mr. Abraham to check these mortgages and see if they had been satisfied.

Q. That report shows a mortgage and release with the date and book and page, and the extension of the mortgage and the foreclosure?

A. Yes, suit to foreclose, yes.

Q. You say you gave that to him. Then what did he do? [1474]

A. Well, he went to the back part of the court house there where they have those mortgage records and did something. Pretty soon he came out and said everything had not been recorded yet, but the man had told him the papers came in satisfying these.

Q. Then you went over later to the office of Vawter Parker? A. Yes.

Q. You heard the testimony of Mr. Abraham about what you said, something that he understood you said about Mr. Stegmann buying this property?

A. Well, yes, I heard that.

(Testimony of Lois Parker.)

Q. You heard that. Did you make any such statement over there? A. No, I did not.

Q. Could you give an explanation of what you might have said that he misunderstood?

A. Well, the only thing that I knew at all, and that was supposed to be a joke, was that Mr. Stegmann had an awfully naughty little boy, and he just remarked to us that that would be a good place to have a cabin to sort of stake him out. I know he came to our house once and, gracious, the curtains got kind of brought down, and he got in to so many things I guess he was a little embarrassed about it, and I may have said something about that, but it certainly had nothing to do with Mr. Stegmann buying the property.

Q. Did you know at that time that Mrs. Stegmann was expecting a baby? [1475]

A. Well, yes, I knew it.

Mr. Jaureguy: I will offer in evidence 123, I think it is, that we have just tendered to the witness.

The Court: Any objection?

Mr. Strayer: No.

Mr. Ryan: No.

Mr. Krause: No.

The Court: It may be admitted.

(Document previously marked Defendants' Exhibit 123 for identification was received in evidence.)

(Testimony of Lois Parker.)

Mr. Strayer: I assume this is a copy of the one already in?

The Witness: That is right.

Mr. Jaureguy: That is right, yes.

Then after he brought the deed back, he testified that you told him whose name to put in as grantee?

A. Yes.

Q. Now, can you explain why the name had not been—or why he had not been advised of the grantee's name prior to the time he brought back the deed?

A. Well, he just didn't say anything to me about it.

Q. What about the day before? Did you have some talk with him about it?

A. Well, yes, but I told him we would decide that evening, and I would let him know.

Q. I think there was some explanation by your husband when he [1476] was on the stand before as to the question that was in your mind as to who should be the grantee? A. Yes.

Q. You say you explained that to Mr. Abraham the day before?

A. Yes, I think I did say something to him about what our reason was for not doing it, but I didn't decide that day.

Q. Then the next morning before he went over to Vawter Parker's office, what would you say as to whether the question of who should be the grantee came up at all? A. He never asked me.

Q. Did it ever occur to you to tell him?

(Testimony of Lois Parker.)

A. I didn't know it made any difference.

Q. Well, what I am getting at is this. Had you and your husband decided by that time who the grantee should be?

A. I just really don't believe that we had decided.

Q. Well, I am talking now about——

A. Oh, the next morning?

Q. The second day, the morning?

A. Oh. Well, when he brought it back, I just put my husband's name in.

Q. Well, before he went over, did you know whose name should be in it?

A. Oh, yes, we decided.

Q. That is what I am getting at when I ask you why you didn't tell him before he went over. [1477]

A. He never asked me.

Q. Did it occur to you before he went over to tell him?

A. No, I didn't think it mattered until it went on record.

Q. Did the subject come up at all or occur to you? A. No, I never even thought about it.

Q. You testified before that when Abraham came back after the transaction he told you about it, this statement that Mr. Winans had made about some technicality in title. I don't know whether you told us where you and he were when he told you that.

A. Well, we were back in his private office by then.

Q. Had the deed been recorded? A. Yes.

(Testimony of Lois Parker.)

Q. Stamps had been put on it, of course?

A. Yes.

Q. And then you went up to his private office?

A. No, we first went to the bank.

Q. First went to the bank? A. Yes.

Q. What did you go to the bank for?

A. Well, because instead of Mr. Vawter Parker making the checks, the refunds to us, he made them to Mr. Abraham. I didn't want to take them back to our bank until I had them in our name.

Q. Oh, you went to the bank and then you went to his office? A. Yes.

Q. Just tell us what he did there about telling you about this [1478] statement by Mr. Winans?

A. Well, first I had to pay him. I didn't have a check with me that day for some reason, and so I paid him in cash, and either he or the girl gave me a receipt, and then when we got all through with that, he asked me to come in to his office, and I thought I was all through. I went in with him. I don't recall, I don't think I sat down. I don't believe he did. Then he just told me about this. He said he thought it was a technicality and it was very unimportant.

Q. Well, I don't know that you have heard all this testimony about that White truck on which Ellis had worked. I don't know, is there anything you could add to what has been said already?

A. Well, it seems like it has a lot of background I don't know anything about, but I did pay Mr. Heider for the truck, and he gave me the titles to

(Testimony of Lois Parker.)

it, as I recall, and I do recall being up to Ellis' garage and talking with him, and he just voluntarily told me when I said we had bought the truck, he just voluntarily told, he says, "Why, you can't have that truck. I have got all this money against it," or something, and I knew nothing about that.

Q. He explained to you, then, all the money that he claimed to have against it? A. Yes.

Q. Then you didn't go there to get the truck, did you? A. No. [1479]

Q. How did you happen to go there?

A. Oh, I think I was just going through Willamina. I don't remember what the reason was, maybe to see what, whether it was there, to look at it at the time. I don't know why. Maybe to see if it had a license, or something. I don't know, but when I got there, why, he told me this long story about it.

Q. Now, if there is no objection, I will approach the next subject a little differently, and if there is anybody has objection, I will do it in the usual way.

Do you recall being at the meeting of the Board of Directors of the Multnomah Plywood on August 20th discussing the sale of this timber?

A. Yes.

Q. Do you recall being up in Mr. Bledsoe's office with Mr. Parker and Mr. Smith discussing the same thing? A. Yes.

Q. Generally speaking, would you say that the conversations that took place at those places were as have been testified by Mr. Parker and Mr. Smith?

(Testimony of Lois Parker.)

A. Why, I believe it is just exactly.

Mr. Jaureguy: If anybody else wants to, they may cross-examine on those subjects, of course. I think that is all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan: [1480]

Q. When you purchased this White truck from Mr. Heider, did Mr. Heider have a certificate of title?

A. I think he did, gave them to me then.

Q. In his possession? A. Yes.

Q. Was the certificate of title in the name of Walt Stegmann or of Otto Heider?

A. I just never paid any attention. I don't know.

Q. But he had a certificate of title in his possession?

A. Yes, I know it was on a White truck and trailer, I mean whatever trailer that was that went with it.

Q. And that was the truck that you purchased?

A. Yes.

Q. Did Mr. Stegmann bring over a copy of a deed on the night of the 10th of September, September 10th? A. Yes, he did.

Q. Bring it over to Mr. Abraham's office?

A. Yes, he did.

Q. Do you remember what he said? Did he bring

(Testimony of Lois Parker.)

it and give it to you, or did he give it to Mr. Abraham?

A. No, he gave it to me, said he was all through now.

Q. Gave it to you, said he was all through. Did he make any mention of a description or record of the reserved area?

A. I think he just said, "Finally we are through with it," or something. He didn't explain it to me, said, "It is right as far as I know." [1481]

Q. Where did he explain it to you, in the inner office?

A. No, I was sitting in the outer office waiting for him to bring it because Mr. Abraham was busy, and so I waited for him in the outer office.

Q. He brought it over to you and handed it over to you? A. Mr. Stegmann did.

Q. Yes, to keep? A. Yes.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Krause:

Q. Who were the grantees you were considering you might want to put into this deed from Winans while you were up there discussing the matter with Mr. Abraham?

A. We were still thinking of our son, but we had talked to Mr. Ferris then, and he said that if we were going to sell this property, it probably was not too practical to do that and try to create a trust for him.

(Testimony of Lois Parker.)

Q. Mr. Ferris had told you that a long time before this deal was closed?

A. Yes, that is true.

Q. So, therefore, you were not considering the son any more?

A. Well, we still considered it. You see, we live in Washington. There is a community property law there, and we often put some property in my name, some property in my husband's name, and [1482] occasionally we put it in our trade name, and we had not just decided. We had to discuss it further.

Q. Occasionally you would put it in the name of the Associated Engineers?

A. That is right.

Q. And in Phillips Construction Company?

A. No, we have never used that name.

Q. Well, now, at any rate, while you were up there then and talking to Mr. Abraham, you had not made up your mind as to whether it would be put into Mr. Parker's name, your name, the son's name or a combination?

A. Well, I would say that when I was at Mr. Abraham's office, it was very late in the evening and he was anxious to leave, so I don't think we discussed that very fully at any time, but that was in my mind, and I did tell him we would definitely decide that night.

Q. At any rate, up to that night nobody had told anybody who the grantee was supposed to be?

A. As far as I know, they had not.

(Testimony of Lois Parker.)

Q. Well, you and Mr. Parker were the only ones that could have told anybody.

A. I couldn't have ever told Mr. Winans at any time because I never did see him.

Q. No, and so far as you know, Mr. Parker had no dealings with Mr. Abraham? [1483]

A. So far as I know, he had not, not at this—not on this transaction.

Q. On this transaction, yes.

A. No, I don't think so.

Q. Well, now, on that day, that was the 10th of September, wasn't it, that Monday?

A. On a Monday, yes.

Q. The day before you got the deed?

A. I believe so.

Q. At that time were you still dickering with the Multnomah Plywood, or had they already turned the deal down?

A. No, I don't think it had been rejected at that time.

Q. You don't think they had rejected it?

A. I don't believe so.

Q. And a few days later you were dickering with some other outfit, or showing the property to them?

A. Yes, that is true.

Q. To try to sell it?

A. That is true.

Q. So, apparently you always had in mind that you were going to sell this property right from the time that you first acquired any interest in it?

A. Oh, we always had that thought that we would

(Testimony of Lois Parker.)

sell it, or we might hold it. It is usually the younger timber that we hold.

Q. Well, on the 13th you got the assignment of the option, and [1484] on the 14th Mr. Parker was already talking to somebody about buying it, wasn't he? A. Certainly.

Q. But you say that you were thinking either of selling it or of holding it?

A. If you want to know about the trust, we didn't know it made any difference whether we sold it or held it. As far as the trust, I mean, there is either timber or there is money for the trust.

Q. But it certainly had some bearing upon putting the title to the property in the name of a minor when you had every intention of trying to sell it immediately, didn't it?

A. Oh, I would not say that. I don't know why it would matter.

Q. Mr. Ferris told you that you would have trouble if you put the title in a minor?

A. No, he didn't say we would have trouble. He said it was not very practical.

Q. You thought that a minor would be able to sign a deed all right and transfer the title to the property?

A. Well, my understanding is that perhaps a guardian or parent might have to sign for it, but I think they could hold property.

Q. You thought a guardian would then be acting for the boy?

(Testimony of Lois Parker.)

A. Why, I believe it is to be together. I really don't know the legal points of it, Mr. Krause.

Q. When did you have this conference with Mr. Parker that finally [1485] led to the decision that Chet L. Parker should be the grantee in the deed?

A. Well, I think that we decided that the night that I went home after I saw Mr. Abraham.

Q. Well, upon that Monday night, did you drive back to Washington?

A. No, I believe we were staying at the Oregon Motor Hotel.

Q. Oregon Motor Hotel. That was the night of the 10th of September? A. I believe so.

Q. Then the first time you told Mr. Abraham as to who was to be the grantee was after he came back from Vawter Parker's office with the deed?

A. That is true.

Q. Did you say that you made any of these entries in the diary, or were they all made by Mr. Parker? A. No, I made some of them.

Q. Even though you explained that before that these minutes of the 11th where it states that you left or just says, "Left Hood River to be at Abraham's at nine a.m.," that refers to yourself?

A. Yes, I think that was a misstatement. I think that was The Dalles. I am positive it was. I think it should say, "Left The Dalles to be at Abraham's office."

Q. The minutes on the 10th of September do not show where you stopped on that day, but you say that you were at The Dalles? [1486]

(Testimony of Lois Parker.)

A. I don't know that I said where I was on the 9th. My recollection is that we stayed there the night of the 10th, according to the diary.

Q. Well, the night of the 10th, yes.

A. Yes, I believe so.

Q. But the diary does not say that you were at The Dalles on that day?

A. No, the diary says that I went—the reason I think so—mind you, I do not have one here to look at.

Q. Well, you should have one.

A. But my recollection is that I drove from The Dalles.

Q. Could you take Mr. Parker's diary and see whether we can get clear on that point?

A. (Consulting diary): Let's see, this is the month of September?

Q. September 10th.

A. Well, let's see, well, I am thinking—the one that I think should be corrected is on the morning of the 11th.

Q. I think you told us that before.

A. On the 10th do you want to know?

Q. Look at the 10th and see whether it says that you stayed any particular place on that night.

A. There is so much here it is hard to read. Oh, well, my husband says that he was at Dufur working that day, and so I am sure that he worked at Dufur, and I went to Hood River, and then we went back. We didn't like to stay at Hood River. As a general [1487] rule we stayed at The Dalles.

(Testimony of Lois Parker.)

It says that the next day we left for Fifteen Mile Creek, so I am quite sure it was at The Dalles.

Q. Do you know why it is on this particular day it does not say a word where you stopped when you were away from home, and without any exception on every other day when you were away from home it says where you stopped at night?

A. That is not correct. I do not agree to that.

Q. Will you call my attention to one?

A. On the 9th it doesn't say we are at home, but it does not say where we are.

Q. But you were not at home on the 10th?

A. On the 10th?

Q. Yes.

A. Well, I am deducing that we were at The Dalles on that night of the 10th because I remember my husband went to Dufur to do this work. He also went back the next day also on that, the 11th. I said, "Left Hood River to be at Abraham's," but I think it was The Dalles. I almost remember driving down that morning.

Q. Now, on the 11th, your first entry there is that, "We checked records to see if judgments were cleared." Were they are judgments against the property?

A. I haven't any idea. I mean, I am talking about anything that was against the property.

Q. But you wrote in here "judgments."

A. Well, perhaps that is my own wording, Mr. Krause. So far as [1488] I am concerned, judg-

(Testimony of Lois Parker.)

ments or anything against it is something against the property.

Q. You do not make any distinction between mortgages and judgments?

A. Probably not when I am writing in my diary. Maybe if you ask me I could tell the difference.

Q. Now, if you go down in your diary a little further, it says, "Met Mr. Abraham in court house where we recorded deed, then we went to bank and had the checks transferred to Chet's name. \$4,750 for land plus \$105.50 for revenue stamps. Mr. A.,"—that is Abraham, I suppose—"put on too many stamps. Then went to Mr. A's office where I paid him."

What were the excess number of stamps that were put on the deed?

A. Well, I didn't understand about when you pay something that you just put on the right amount, so I had \$125,000 worth of stamps, and I thought Mr. Abraham would count out what he thought was proper, but he didn't count them.

Q. You had \$125,000 worth of stamps?

A. Yes, that was originally what I figured the property would cost us without these other things, and when I gave him the envelope I didn't say to him to put on a hundred thousand dollars. I just supposed he would put on what was proper because I didn't know.

Q. You thought there should only be stamps for a hundred thousand [1489] put on?

A. I wasn't sure. I thought it might be that we

(Testimony of Lois Parker.)

would have to put on stamps for a more amount. I just didn't know about that so when I bought stamps I got enough. I thought he would just automatically put on the right amount because I don't know how to count them.

Q. Did you get stamps for \$125,000, or did you get \$125,000 in revenue stamps?

A. I don't quite know what you mean.

Q. Well, do you know how many revenue stamps were put on the deed finally?

A. No—yes, I do, because I said to Mr. Abraham as we were leaving, I said, “Did you get any stamps back?” He says, “What stamps?” I said, “Well, revenue stamps.” He said, “I put them all on.” So when I told him that, I said, “It was for \$125,000 worth; is that right?” He said, “Well, no, we should have just put on the amount of the sale.” But he had already cancelled them by that time, and they were sticking on there.

Q. What was the amount of the sale for?

A. Well, actually, by the time we all got through with the thing, I have added this up several times, I really can't tell you, but I think finally it was \$95,250 that Mr. Winans got out of it. I think that is the amount. Now, I am not positive.

Q. That was the amount that you thought was the consideration for the sale? [1490]

A. Well, it was supposed to be a hundred thousand, but then some was taken off, and what not, so I don't really know.

(Testimony of Lois Parker.)

Q. You have got it right there in your diary, \$4,750 was taken off for the reserved area.

A. Well, but I only took him a check for \$95,000. He already had it figured, so I haven't yet figured out quite how much money he got out of it. That is what we got back, anyhow.

Q. You got \$4,750 back? A. Yes.

Q. Plus \$105.50 for revenue stamps?

A. Yes.

Q. I want to return to this other matter now. "Mr. A. put on too many stamps." You had how many stamps there with you at the time?

A. Well, I think my husband bought them. I am not positive, but I think he did, and I think that probably he said, or at least I have the idea that there was enough revenue stamps, the post office man figured out for \$125,000 transaction. Now, I didn't count them, and I don't know, but anyway, I had them all in a little envelope that the post office gives you, just a regular post office envelope, and that is the envelope I gave to Mr. Abraham.

Q. Well, your reference in the diary here, then, is to this matter that you put on, or Mr. A. put on stamps covering this \$4,750 as well as what you actually paid for the property? [1491]

A. Apparently he must have put on this \$4,750. He put on all there was, so whatever is on there now you could tell and including—and I had in mind including the option.

Q. Did you tell Mr. Abraham how this price had risen from \$95,000 to \$125,000?

(Testimony of Lois Parker.)

A. Well, yes, I think probably when we talked about the amount of stamps I think I told him that that included the option money, and so I was just curious, I wanted to know for my own benefit how many stamps it took on that, and why Mr. Winans didn't put the stamps on, I don't know.

Q. Why Mr. Winans didn't put them on?

A. Yes, don't people usually put them on deeds that you sell?

Q. Well, if that were the case, why did you have them supply you with the \$125,000 worth of stamps?

A. I don't have any idea, Mr. Krause. I don't know, but I did get a check for this amount from Mr. Vawter Parker, so it must have been Mr. Winans' responsibility to put them on.

Q. Now, you told Mr. Parker then that there had been an additional amount paid for the option?

A. I told Mr. Abraham.

Q. Mr. Abraham, pardon me.

A. Yes, I believe so.

Q. Because Mr. Abraham had only gotten \$105 worth of stamps—I mean money to buy stamps—

A. You mean I told him that because he only got one hundred and [1492] five?

Q. Well, when Mr. Abraham came back with the deed, he came back to you with a deed and a check for \$4,750 and another check for \$105.50, didn't he?

A. Well, I didn't actually see those checks until we went to the bank, but, really, the checks did not

(Testimony of Lois Parker.)

have anything to do with the amount of revenue stamps. It was merely just a mistake on Mr. Abraham's and my part.

Q. Well, I am trying to find out how it was Mr. Abraham's fault when you gave him the envelope with stamps and tell him to put them on the deed.

A. No, no, I said, "Put the right amount on the deed."

Q. Now, on the night of the 11th—I want to call your attention to that again—you recorded that you stayed at the Oregon Motor Hotel?

A. Well, on the 12th it says Oregon Motor Hotel.

Q. Pardon me. Well, I can sure read on the night of the 11th of September, "Staying at Oregon Motor Hotel tonight."

A. Oh, yes, I am sorry, Mr. Krause.

Q. Now, would you like to take a look at your deposition which you gave on the 14th of November, 1952?

The Court: What page, Mr. Krause?

Mr. Krause: First on page 85.

Q. Now, you have in mind, don't you, that you have just told us that the night before you decided that only Chet Parker's name [1493] should be placed in the deed, haven't you?

A. Well, I think it was done on the spur of the moment, Mr. Krause.

Q. Well, didn't you just finish telling us you decided it the night before?

(Testimony of Lois Parker.)

A. Yes, I think I did tell you that.

Q. All right, now, let us take a look at your testimony in the deposition. A. All right.

Q. In the middle of page 85, "Did you tell him whose name to fill in, or did you fill it in?"

"A. No, he filled it in.

"Q. And your husband's name was inserted as the grantee?"

"A. Yes, it was. There wasn't room for both our names."

Is that your answer?

A. Yes, my answer is just the same now as it was then.

Q. Now, let us turn to page 128. Would you read over on page 128 starting in with the first question:

"Q. Why was the name in the deed left in blank when it was being prepared?"

A. (Reading): "I think we were talking with Mr. Ferris about that time having to do with a trust account for our son, and I think there was a discussion about that, but I am not positive as to what it was. As near as I know, that is the reason.

"Q. Then the reason why the name Chet L. Parker was [1494] inserted as grantee in the deed, as you have previously mentioned, was that there was not room for both his name and your name. Could there have been any other reason?"

"A. Mr. Ferris had told us in the meantime in order to set up a trust account—I have forgotten

(Testimony of Lois Parker.)

all the details—but it was impractical if it were something we were going to sell immediately you see, for ourselves, and so in the meantime we just did nothing further about it, and when Mr. Abraham brought the deeds back there was just about room for my husband's name, and here I was with the deed, and it was time to put someone's name in, and I put my husband's name in. Sometimes we had those in our joint names or sometimes it is in mine, and sometimes it is in his, and occasionally we buy something for ourselves."

Q. You gave that answer at the time?

A. Yes, sir, I did.

Q. Now, why did you put Chet L. Parker's name in the deed, or tell Mr. Abraham to do it, on Tuesday morning just at the time, just before the deed was recorded?

A. He never asked me any other time.

Q. Well, that isn't the question. Why did you only put Chet Parker's name in at that time?

A. Well——

Q. You give two different versions here. Now, which one is the correct one?

A. Well, they are both my versions. [1495]

Q. They are both your versions?

A. And as I said here, they are still both my versions..

Q. All right, then, answer once more, then, why was Chet Parker's name inserted?

A. We had talked about it the night before, and my husband is quite indefinite sometimes, and he

(Testimony of Lois Parker.)

said, "It is all right to put in my name or do just as you like about it." And it didn't come up the next day at all, and when Mr. Abraham came back and asked me, I said, "Just put my husband's name in," assumed I had to decide just right there. I didn't give it any thought at all after that.

Q. Then the fact that there was not space for both names had nothing to do with it?

A. It was not until I saw the deed that I knew there was not space for both names. I suppose if it was not in here it was merely supposition on my part.

Q. And apparently it was not decided the night before, then, whether Chet L. Parker's name should be put into that deed?

A. My husband said it was perfectly all right to just put his name in it.

Q. And he also said it was perfectly all right to put your name in?

A. I am sure he would not have cared at all if I had put my name in.

Mr. Krause: I think that is all. [1496]

Cross-Examination

By Mr. Buell:

Q. Mrs. Parker, at the risk of belaboring the point on this revenue stamp question, there wasn't any mistake on either your part or Mr. Abraham's part about putting \$125,000 worth of stamps on that deed, was there?

A. That is what he told me there was, Mr. Buell.

(Testimony of Lois Parker.)

Q. Do you mean to tell us here now that it was purely coincidence that you had \$125,000 worth of stamps on that envelope and gave them to Mr. Abraham to put on the deed, and you didn't have any idea of how many stamps you wanted to put on?

A. No, it is not a coincidence at all. I wanted to have enough stamps. I know we had paid \$125,000 for the property. I gave him the envelope, and I supposed he would put the proper amount on, knowing the proper amount was \$125,000, so far as I knew, and he said he didn't count that. He just supposed that it was the proper amount. It was merely a small detail, and he even offered to give me a letter on that at the time that he had nothing to do with the sale of it at all.

Q. What did he say he would give you the letter on that for?

A. Because he made a mistake, and he didn't count them properly. After all, it was his duty to count the stamps, put them on, and he didn't do it, and he did say he did put on what was in the envelope, and it turned out to be too many.

Q. What kind of a letter? Who would the letter be for? [1497]

A. Well, at the time right now, for instance, and that letter would be good if, for instance, the Internal Revenue would be interested in how much we paid for that property, and, actually, later it would be interested in how much Mr. Winans sold

(Testimony of Lois Parker.)

it for so if, actually if I was considering my own benefit, I would need that \$125,000, but from Mr. Winans' benefit, probably his Internal Revenue probably should have the proper amount. He got the money, and I didn't know which was which.

Q. You are not telling us now that you only paid a total of \$95,000?

A. No, I am not. It cost us that amount of money that Mr. Winans got plus the amount for the option.

Q. Which was the amount that you claimed you paid Mr. Stegmann plus the amount that you claim you paid to Winans, would be the figure that you would use as your cost in determining any profit or loss on the sale of that property; isn't that right?

A. I claimed that amount, I claim that amount as the amount I would take for profit and loss, but the money was paid.

Q. While we are on the question of amount, you and your husband, for the last four years, have become quite familiar with the advantage of long-term capital gains, have you not, in the sales of your timber and equipment?

A. I think people have generally been familiar during any period of time with long-term gains.

Q. I wonder if you could tell us why you and Mr. Parker were so [1498] anxious to make a quick sale of this property?

A. Yes, I can tell you.

Q. Why?

A. Because the money was going to be out for

(Testimony of Lois Parker.)

quite some time, and you would report it on a contract basis.

Q. Well, you knew at that time, did you not, that your income, net income for that year, was approximately \$68,000 and that every thousand dollars over and above that you would pay about 76% in tax to the federal government on your short-term basis, did you not?

A. We don't pay our income tax until the end of the year, Mr. Buell. I had no idea what our net income was.

Q. You knew as you went along the amounts of money you had received for the various properties that you had sold?

A. Why, certainly, I knew the amounts of money.

Q. And you knew—you keep a rough track as you go along, when you complete a deal you make at least a rough estimate of what your profit on it is, do you not?

A. I usually write it on the deposit slip.

Q. You knew by this time in 1951, by the summer of 1951, that you were going to be in a very high tax bracket for that year, didn't you?

A. I certainly didn't. I never know how much are our taxes until Mr. Rich tells me.

Q. Have you ever been in the Parkdale Ranger Station? [1499] A. Yes.

Q. When was that?

A. It was after we received the letter from the Forest Service, and I went up and asked. Now, I

(Testimony of Lois Parker.)

won't say that it was—I will say that it was after Mr. Miller told us that Mr., I believe it is, Holtby, the Ranger's name, that Mr. Holtby had told him that there was a defect in the title. I went up and asked Mr. Holtby just exactly what that circumstance was and why he had not told my husband when he met him on the road and came up to Lost Lake the day that he was with the other men, and his answer was that he didn't know why, he had told the Forest Supervisor in Portland. Whether that is Mr. Cooke or not I don't know. I asked if he had a letter written of the claim telling him about it, or just exactly what the circumstance was that they discovered it, and he just would not give me any answer at all.

Q. Why did you wait until the middle of December to go up to ask them about that?

A. Well, it just may have been that I was curious about it.

Q. Did you go up alone, or with Mr. Parker?

A. As I recall, it was in the winter time. I mean, up there it was because there was ice. I don't recall, I think I went alone.

Q. I wonder if I could have the Exhibit 123, please?

This title insurance report is the one you say you gave to Mr. Abraham and asked him to take it to the court house and find out whether or not those various exceptions had been taken care [1500] of?

A. I didn't get him to take it into the court

(Testimony of Lois Parker.)

house. After we were at the court house, when he was ready to check the mortgage, I gave it to him.

Q. But you actually gave him the document itself? A. Yes, I did, Mr. Buell.

Q. And this is the document that he had the information to check against while he was in there?

A. That is the very one.

Q. Then I suppose when you were back in his office after the deal had been completed and he was telling you about this technicality, as you have referred to it, that he told you the reason that you didn't have to worry about it was because you had title insurance and that if anything was wrong, why, the title insurance would take care of it?

A. I think that was my remark to him, Mr. Buell, but it apparently was not entered or the title policy would have shown it.

Q. There is no uncertainty in your mind at all but what you had discussed the question of your title insurance with Mr. Abraham in addition to showing him this preliminary report?

A. I think possibly the only discussion I may have had was at the very beginning, something might have been said about the bargain and sale deed. Then when he told me about the technicality I don't recall discussing any title with him.

Q. Well, now, Mrs. Parker, would you refer to September 11th in [1501] your diary, to the notation that you have put in there that Mr. Abraham says, "That it wasn't important as Title and Trust

(Testimony of Lois Parker.)

Company didn't show anything, it must not be."

A. That is my own thought, that as Title and Trust Company did not show anything, it must not be important.

Q. Well, perhaps I should not have——

A. That isn't what I mean at all, it means that it must not be important because Title and Trust Company did not show anything. Now, he could have said it, too. I don't know. Maybe he agreed with me.

Q. But you put in your diary that that is what he said? A. That isn't the way I read it.

Q. I will read the whole sentence and let it speak for itself. You correct me if I am misreading.

"Mr. Winans told Mr. A. quote 'There is a technicality in the title.' " A. That is right.

Q. "but Mr. A. says it wasn't important——"

A. Period.

Q. "as Title and Trust Company says it wasn't of——"

A. You left out the period after "important."

Mr. Krause: It is not on my copy.

Mr. Buell: There is a period after "a," but I think——

Mr. Jaureguy: We will supply it.

The Witness: I think the "a" is a capital "a." I am not [1502] sure, but I think it is.

My thought is that as Title and Trust Company didn't show anything, it must not be.

(Discussion between counsel off the record.)

Q. (By Mr. Buell): To straighten out this

(Testimony of Lois Parker.)

technicality, would you refer to the language which we have just been reading commencing: "Mr. Winans told Mr. A. quote 'There is a technicality in the title——' " A. Comma.

Q. "Comma, but Mr. A.——" A. Period.

Q. "says it wasn't important."

A. Period.

Q. Then there is a period there and there is the word "as" with a small "a" originally, or at least a small "a" and then a large "a" written over it?

A. Yes.

Q. And then the sentence completes: "Title and Trust Company didn't show anything, it must not be."

When did you make that change of the form of "a"? Was that when you wrote it or at some later date, over that "a"?

A. Well, I said it looks to me as if I had just forgotten to put a capital so I just wrote over it with the pen as I was writing it. I don't know.

Q. On this White Truck, Mrs. Parker, didn't you make a trip down [1503] to Mr. Ellis' garage before you even thought anything about getting the title from Mr. Heider, and asked Mr. Ellis about how much it would cost to get the truck out?

A. I haven't any idea when I was there, Mr. Buell. I don't know when I was there.

Q. Well, I am not trying to get you to pinpoint a date. I am just asking you the question of whether or not prior to the time that you acquired the title to it from Mr. Heider, you went to see Mr.

(Testimony of Lois Parker.)

Ellis and asked him how much it would cost to get the truck out?

A. I think it is rather to the contrary. I think that when I went there Mr. Ellis told me those things, said we couldn't have the truck.

Q. Was that before or after you acquired the title? A. I thought it was afterwards.

Q. Then you are not testifying that what Mr. Ellis stated was incorrect, that you did not go down there and inquire as to how much it would cost to get it out, but you claimed the truck as yours?

A. Well, when he told me this and said I couldn't have it without paying, I asked him how much money it would take to get the truck out of there, but I certainly didn't go there prior to buying the truck and ask him how much money it took.

The Court: I think she has explained that transaction, and I think the whole transaction has come out. I do not see any [1504] useful purpose in going into that truck transaction any more.

Mr. Buell: All right, your Honor, I will pass it.

There was one point on a little different line that I wanted to ask Mrs. Parker about.

The Court: Go ahead.

Q. (By Mr. Buell): There has been evidence in the case, Mrs. Parker, that Mr. Parker subsequently acquired at least two mortgages on Mr. Stegmann's equipment that had been formerly held by Mr. Heider.

Now, didn't Mr. Parker have some kind of an arrangement whereby he had guaranteed or under-

(Testimony of Lois Parker.)

taken to agree to take up Mr. Stegmann's mortgages if they got in default?

A. We have never agreed to take up anyone's mortgages. The only mortgage of Mr. Stegmann that we ever took up was the one that the First National Bank held, and we did that to protect our second mortgage.

Q. Well, how about the one on the—the mortgage on the Caterpillar or on the tractor that was being hauled by Mr. Stegmann up into Section 7 that fell into the river?

A. I think my husband bought that because of salvage, but there will be made some money on it, I think. I don't know the positive reason, but it certainly had nothing to do with Mr. Stegmann being in arrears, I don't believe.

Q. Now, on this question of you say you would take the property in your name sometimes, Mr. Parker's name sometimes, and your [1505] son's name, and you also have on occasion used a maiden name to acquire timber property, have you not?

A. I did on one occasion, yes.

Q. Is that the only occasion that you have ever done that?

A. Since I have been married it is the only one I remember of.

Q. That was on the property down by the Coast?

A. Yes.

Q. You bought from Mr. and Mrs. Neer?

A. Yes.

(Testimony of Lois Parker.)

Q. Now, the safe deposit records show that a person, I believe Hattie Hutchins, had access to your safety deposit box. Is that your mother?

A. That is my mother.

Q. Did she have an interest in some of the moneys or whatever you had in the box?

A. No, mother had a good deal of mortgages on things, and yet it wasn't really enough to have a box of their own, so she left them there for a time. She has since taken them out.

Q. Now, while we are on the subject of safety deposit boxes, I wonder if you could give us any explanation of your testimony at the time of your deposition that the First National Bank of Mc-Minnville was the only bank in which you had ever had any safety deposit boxes in view of your testimony when you were called here a day or so ago that you had a safety deposit box at the Bank of California? [1506]

A. I had forgotten that one, Mr. Buell. We didn't use it very long. It is not our regular bank.

Q. Just a question of failing to recollect?

A. I believe it is.

Q. Now, the Phillips Construction Company, I believe you stated you never took any title to timber or property in the name of that company?

A. No, I don't believe we ever used that because we didn't file the name.

Q. You thought you were going to engage in some construction business under that name?

A. Yes.

(Testimony of Lois Parker.)

Q. Whereabouts?

A. On some road building. I don't remember the place now.

Q. Was that just about the time that you acquired this Lost Lake property?

A. Well, I don't remember when that was, Mr. Buell.

Q. Well, you had a specific venture in mind, didn't you, when you opened the account?

A. Well, I wouldn't say that we knew that we were going to build a road, for instance, in Tillamook County, but my husband often thinks of these things we will do in the future, and we were just laying plans to do so.

Q. That account was opened in August of 1951 with a hundred thousand dollar deposit; was [1507] it not?

A. I remember a hundred thousand dollar deposit, but I don't remember when it was opened.

Q. Well, prior to 1951 you had never used Oscar Parker's address in McMinnville as your address for mailing bank statements and items such as that, had you?

A. I don't recall. We might have sometimes. If we are going away on a trip and we do not have a caretaker at home to take in the mail, we often give that address and have all our things sent there.

Q. Did you do that prior to 1951?

A. Oh, we have had our mail sent, as I recall, so far back—the first time I specifically recall is

(Testimony of Lois Parker.)

when we went to Alaska in 1944, and we had all our mail and statements sent there.

Q. The record shows that your bank statements on your personal account, or rather the account of just the names Chet L. Parker or Lois Parker were sent to your Vancouver address, and that at the same time that you changed the address for your personal account from your Vancouver to Oscar Parker's that the Phillips Construction Company account was activated, showing as the address Oscar Parker's address.

A. Well, I don't recall what the reason was, Mr. Buell, but there was one, I suppose. Maybe they just didn't change the other one.

Q. Am I correct that you have turned over to Mr. Jaureguy all of the checks that you have for the years 1950 and 1951? [1508]

A. Well, if those are all of the checks that I gave you, that is all there were because there are motel checks that are gone.

Q. But you haven't any idea where the others might be?

A. Well, I thought I looked through very carefully when I sent those up, and we have them segregated in drawers. I am just sure with the exception—I have looked through to try to check on those. I remember specifically their amounts. They seem to be there.

Q. How about the deposit slips?

A. I have not checked them against the state-

(Testimony of Lois Parker.)

ments, and I never looked at them from the time I sent them to you, so I just don't know.

Q. I think the record will show here that there are no deposit slips for the Phillips Construction Company account. You do not have any idea as to where those would be or why they would be grouped separately?

A. Well, I just think that—no, I don't think they ever were. I think the deposit slips were just grouped all together.

Q. I thought that was your testimony that you never used to treat the accounts as separate accounts? A. No, I never did.

Q. For some reason or other, you just had the two accounts and the bank just charged the checks whichever way they——

A. Yes, and I hadn't any idea. In fact, I never thought of that before. [1509]

Q. I think, although I haven't had an opportunity to give a close check, but I think the record will show that there are practically none of the checks charged against the Phillips Construction Company account included in those that you delivered to Mr. Jaureguy, other than the ones that were specifically connected with this transaction, such as the checks to Mr. Winans and the check to Mr. Stegmann.

A. Well, is that account still open yet?

Q. Well, it was open until May, 1951. I don't know whether it is open now or not.

(Testimony of Lois Parker.)

A. Well, I just don't know a thing about it, Mr. Buell.

Q. Those would not be down at Oscar Parker's, would they?

A. Oh, no, I do not have any more checks. I had to use those for my income tax.

Q. Mr. Jaureguy asked you on direct examination if at the time you were over there at Attorney Parker's office on September 11th, whether or not you knew that Mrs. Stegmann was going to have a baby, and you said yes; that is correct, is it not?

A. Well, why do you care?

Q. I was just asking.

A. I am not going to answer that.

Q. Do you recall Mr. Stegmann's testimony that his wife had had a baby on August 17th?

A. (No answer.)

The Court: All right, go ahead. [1510]

Mr. Buell: We would like to offer the diary, which is Exhibit 115, I believe, and 115-A in evidence, your Honor. I don't know if it was received yesterday or not on the questions brought out.

The Court: Any objection?

Mr. Jaureguy: No objection.

The Court: It may be admitted.

(Original diary of the Parkers, together with photostatic copy of entries from September 26, 1951, to October 22, 1951, previously marked Defendants' Exhibits 115 and 115-A, respectively, were received in evidence.)

(Testimony of Lois Parker.)

Mr. Jaureguy: I want to ask the witness a question about it, however, when he is through.

Mr. Buell: Nothing further.

The Court: Go ahead.

Redirect Examination

By Mr. Jaureguy:

Q. Mrs. Parker, this diary that has just been introduced in evidence, do you recall when you turned that over to me?

A. Well, I believe, I don't remember when we first consulted you, but I think it was shortly after that time.

Q. And you first consulted me, you recall, on the 6th of December?

A. I believe it was in December. [1511]

Q. At least it was the same day that you were served with a summons and complaint in this case?

A. Yes, it was that same day.

Q. And your recollection is that you turned it over to me about a week or two later?

A. Well, it was not very long because we gave it to you before we left.

Q. Has it ever since been in my possession, as far as you know?

A. Yes, the original you have had all the time.

Mr. Buell: Just so far as we are concerned, just state the date in the record, Mr. Jaureguy.

Mr. Jaureguy: I would say a week or ten days after the 6th of December. That is all.

(Testimony of Lois Parker.)

Examination by the Court

Q. I would like to ask one or two questions.

Did you get on the 10th a copy of the proposed deed that the Winans were going—or that Ethel Winans intended to execute? A. Yes.

Q. What did you do with that copy?

A. I gave it to Mr. Jaureguy.

Q. Did you on that day I am talking about, on the 10th of September?

A. Oh, I gave it to Mr. Abraham to look at.

Q. Had you looked at it at all? [1512]

A. No, sir, I don't—well, I wish I had it in my hands. I had to give it to him.

Q. Did you read it? A. No.

Q. Prior to that time another form of deed had been prepared, had it not?

A. I had not ever seen another one.

Q. On the previous Saturday had a form of deed been prepared?

A. I didn't see one, and I never heard of one. They didn't submit it to us.

Q. Did you have any discussion with Mr. Abraham as to the form of the deed on the evening or late afternoon of September 10th?

A. I asked him about the kind it was. I told him we were not familiar with a bargain and sale deed.

Q. Did he read it aloud?

A. No, he didn't.

Q. Now, you knew at that time that Miss

(Testimony of Lois Parker.)

Winans would have to sign the deed before—either that evening or early the next morning because Mr. Abraham had made an appointment to pick up the deed about nine o'clock the following—

A. Yes, I knew she had to sign the deed.

Q. Are you acquainted with the fact that the proposed form of deed is one that is issued to a man and not a woman or a couple?

A. Well, no, I didn't know, your Honor.

Q. You have seen a lot of deeds before, haven't you, deeds that [1513] were executed—

A. Well, I think, I think so.

Q. That were delivered to you?

A. I think so.

Q. And when they had your name, they used the form, "To her heirs and assigns"?

A. Yes, it should be if it is correct.

Q. And if there were two parties they would use the word "their"? A. Yes.

Q. In this one they used the singular or a deed to a man?

A. Yes, Mr. Abraham mentioned that to me at the court house. He said that we would have to change it if I didn't do that.

The Court: Any further questions?

Mr. Krause: We have nothing.

Mr. Jaureguy: That is all.

The Court: That is all.

(Witness excused.)

Mr. Jaureguy: I have no more witnesses for the

day, your Honor. I have at least two more, from out of town, both of them. I would say there was one question I was going to ask.

The Court: Go ahead.

Mr. Jaureguy: It is something I know about, if it is all right for me to make a statement. They wanted to know about it, and that is about the time that this trial started she ascertained and called my attention to the fact, or I questioned her [1514] about further checks, and she said there were some further checks down in Medford and that she sent for them and that her mother and son sent them up to them, which I turned over to counsel, and she, of course, had no opportunity to further examine in Medford to decide whether there were any checks there. I thought that should be given.

Now, I have some exhibits I want to offer, the pre-trial exhibits that are numbered. I can just offer now.

The Court: All right:

Mr. Jaureguy: I would like to have the same privilege later that was given the other parties.

The Court: You will get the same privilege as Mr. Strayer and Mr. Krause.

Mr. Jaureguy: And if necessary I will ask——

The Court: And Mr. Ryan, also

Mr. Jaureguy: 101, which is the actual deed which was placed of record with the revenue stamps on it.

The Court: It may be admitted.

(Document referred to, previously marked

Defendants' Exhibit 101 for identification, was received in evidence.)

Mr. Jaureguy: 102, the letter from the United States Department of Agriculture, Forest Service, dated September 27, 1951, addressed to Mr. Chet L. Parker at McMinnville, Oregon, registered mail, return receipt requested, advising him the Government claims [1515] title to the northeast quarter of the northwest quarter of this particular Section 16.

The Court: It may be admitted.

(Document referred to, previously marked Defendants' Exhibit 102 for identification, was received in evidence.)

Mr. Jaureguy: 105 is a check dated 8-30, but it is possible that something else was written first under the "3," signed by Chet L. Parker, to Title and Trust Company for \$405, and down in the lower left-hand corner it says "Parker" and then I think it is an ampersand——

The Court: What?

Mr. Jaureguy: An ampersand, which is an indication of "and" and "Winans purch. policy."

The Court: 105 is admitted.

(Check referred to, previously marked Defendants' Exhibit 105 for identification, was received in evidence.)

Mr. Jaureguy: 106 is a statement from the Hood River branch of the Title and Trust Company dated August 30, 1951, to Chet L. Parker, giving the de-

tails of the charge for the policy after giving credit for the owner's policy.

The Court: Admitted.

(Document, Order Number HR12-987 of Title and Trust Company dated August 30, 1951, to Chet L. Parker, [1516] Vancouver, Washington, previously marked Defendants' Exhibit 106 for identification, was received in evidence.)

Mr. Jaureguy: Number 107 is a title report originally unsigned, however, but to have been signed by Edwin E. Miller, Assistant Secretary of the Hood River branch of the Title and Trust Company, dated August 15, 1951, addressed to Chet L. Parker.

The Court: Admitted.

(Title report previously marked Defendants' Exhibit 107 for identification received in evidence.)

Mr. Strayer: Is that the original of the carbon?

Mr. Jaureguy: Yes.

108 is a Title and Trust purchaser's title insurance policy dated the 30th of August, 1951.

The Court: Why are you offering that in view of the fact that it is stipulated that it is Exhibit E attached to the——

Mr. Jaureguy: Owner's policy, yes, I withdraw that. Then the owner's policy.

The Court: That is Exhibit F.

Mr. Jaureguy: I will withdraw that, too.

111 is a check from Lois Parker to the First National Bank for \$95,000 dated September 10, 1951.

The Court: It is admitted.

(Check above referred to, previously marked Defendants' [1517] Exhibit 111 for identification, was received in evidence.)

Mr. Jaureguy: 112 is a carbon copy of the letter on the stationery of Marsh and Marsh dated September 25, 1951, addressed to the Title and Trust Company, advising them of a defect or encumbrance in the title of this property, and I ask counsel to state whether they will admit that that was received by Title and Trust?

The Court: Is that the original or is that a carbon?

Mr. Jaureguy: That is a carbon, but they have had the original sometime, surely. I have seen it. At least I think I have.

Mr. Buell: That was received by Title and Trust after Title and Trust had advised Mr. Parker and Mr. Marsh that it would be advisable to give the company a written notice.

The Court: That is not what he is asking. Did you receive the original?

Mr. Buell: Yes.

The Court: Admitted.

(Document referred to, previously marked Defendants' Exhibit 112 for identification, was received in evidence.)

Mr. Jaureguy: I will agree that such sugges-

tion was made. 113 is a carbon copy of a letter from Marsh and Marsh and Dashney, dated November 2, 1951, addressed to Griffith, Phillips & Coughlin, wondering if they couldn't get an answer to their [1518] letter of recent date.

Mr. Buell: That was received.

The Court: It is admitted.

(Letter referred to, previously marked Defendants' Exhibit 113 for identification, was received in evidence.)

Mr. Jaureguy: Counsel says that was received.

The Court: Admitted.

Mr. Jaureguy: Number 118 is the original complaint filed in this case by Title and Trust Company.

The Court: All right, admitted.

(Complaint referred to, previously marked Defendants' Exhibit 118 for identification, was received in evidence.)

Mr. Jaureguy: That is all I have for today, your Honor.

The Court: We will recess until 10:30 Monday morning.

Mr. Jaureguy: I hope your Honor understands that we do not finally rest until all that evidence is in, including the Wardell deposition?

The Court: Yes.

(Thereupon, an adjournment was taken in the above-entitled matter until Monday, February 9, 1953, at 10:30 a.m.) [1519]

Monday, February 9, 1953—10:30 A. M.

(Trial resumed pursuant to adjournment duly had.)

The Court: Mr. Jaureguy, proceed.

OTTO W. HEIDER

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Mr. Heider, where do you live?

A. Sheridan, Oregon.

Q. What is your profession, your occupation and profession?

A. Well, I have two. I am an attorney and farmer.

Q. I beg your pardon?

A. I have two professions. I am an attorney and a farmer.

Q. Attorney and a farmer, and which predominates?

A. Well, I don't know. I think the law business a little bit.

Q. How long have you been a practicing attorney in the State of Oregon? A. 38 years.

Q. How much of that has been at Sheridan?

A. All of it.

Q. All of it. Now, are you acquainted with the defendant, Walter [1520] Stegmann?

(Testimony of Otto W. Heider.)

A. Yes, very well.

Q. How long have you known him?

A. Oh, I think about 10 or 15 years.

Q. Particularly directing your attention to the period of time prior to 1951, or 1951 and prior thereto, did you ever have occasion to have financial transactions with him? A. I did, sir.

Q. Was he ever indebted to you?

A. Yes, sir.

Q. What would be the amounts he would be indebted to you?

A. Well, it would vary. He has been indebted to me as much as ten or fifteen thousand, perhaps as high as twenty thousand.

Q. Could you give us your opinion, and what is your opinion, as to him as a debtor, that is, whether he can be depended on, or whether you are liable to lose a little on your money?

A. Well, I consider him a substantial, good moral risk.

Q. Did he always pay you back?

A. Yes, yes, he did.

Q. Was he on time, or was he slow at times?

A. Oh, he operated on about the same basis as most of the gyppo loggers do. They were not exactly on time, and we didn't require them to be exactly on time. A logger is supposed to have a reasonable grace period, you know. That is the way they operate. [1521]

Q. Do you know the defendant, Chet Parker?

A. Yes, I do.

(Testimony of Otto W. Heider.)

Q. And the defendant, Lois Parker?

A. Yes, I do.

Q. How long have you known them?

A. Well, I think I have known them, I think Lois was born pretty close to Sheridan. I knew their parents. In fact, I guess I have known them about all their lives.

Q. Now, did either or both of them ever have any occasion, in 1950 or thereabouts, to consult with you with respect to Walt Stegmann as a possible recipient of loans from them?

A. Well, I am quite sure they did because I have done some legal work for them and I happened to be probably handy and convenient there, and either Mrs. Parker or Mr. Parker would stop in and we would talk matters over, partly as client and partly as friend.

Q. Did you give them the same views as to Stegmann you have given the Court today?

A. Yes. I have told, I think it was Mrs. Parker that consulted me about Walter, and I told her that I consider him a substantially good moral risk.

Q. And that eventually he would pay off?

A. Yes, yes.

Q. Is that still your opinion of Stegmann?

A. I have no reason to change it.

Q. Now, did you ever sell them the White truck and trailer and [1522] the Walker trailer?

A. Well, I didn't exactly sell it to them. They paid me off on that, as I recall. I wasn't the owner of it; I was the legal owner of it.

Q. You were the legal owner? A. Yes.

(Testimony of Otto W. Heider.)

Q. Did you transfer the title to them?

A. Yes, I did.

Q. I hand you Exhibit 122 and ask you whether that is the check that paid you off?

A. Yes, I am very sure it is.

Q. Thereafter the evidence shows there was a replevin action brought by Chet Parker through Marsh and Marsh, their attorneys. Would you know anything about that?

A. Well, I don't know too much about it, and I think that is probably true. I think I know why that was done.

Q. Will you tell us why?

A. Well, I was City Attorney at that time at Willamina, and I think Ellis was running this, what we call the Richfield Garage, and I didn't want to sue one of the City Councilmen there, and I told them they might have to have someone else, so they paid me off. I says, "I don't think that the Richfield Garage has any real claim against the truck, but they might not realize it voluntarily and you might have to threaten an illegal act of some kind to get possession." I said, "I don't think, I am sure they [1523] do not have"—I think if I recall right, they were claiming a possessory lien on gas and oil, a lot of things of that kind, and I advised Mrs. Parker that they were lienable items, but they might have to threaten, something like that, and, in fact, I had called previously, one time I think I had called Mr. Ellis up. He said, "Well, we got the truck. We are going to keep it until we

(Testimony of Otto W. Heider.)

get our money." I said, "I don't think you can." Then I think I suggested to Lois that she might have to have some attorney threaten or begin action to get possession. I think that was the substance of our conversation.

Mr. Jaureguy: You may take the witness. [1524]

* * *

Cross-Examination

By Mr. Buell:

Q. Mr. Heider, were all of your transactions with Stegmann [1536] straight loans, or were some of them incidental to the purchase by Stegmann of equipment that you owned?

A. Many of them were sometimes incidental with the purchase of equipment that he would have selected some place else, and then I financed it for him.

Q. All of the loans secured?

A. Well, substantially so. I was not particularly anxious about the value of the security, but they were substantially so.

Q. You felt that they were adequately secured?

A. Well, I didn't—just like I told Mr. Ryan there, I didn't see the equipment so I don't know how adequately secured they were, but I had dealt with Mr. Stegmann and I found him a good moral risk, and that was as far as I went.

Q. What interest rate did you generally charge Mr. Stegmann?

A. Oh, it was the usual charge, 5% straight interest.

(Testimony of Otto W. Heider.)

Q. Is that 5% discounted?

A. Yes, that is, a thousand dollars, if you discounted it, why, it would be \$50 for a year, 12 months.

Q. And you discounted in advance?

A. Discounted in advance; that is right.

Q. Well, now, with reference to these various mortgages that Mr. Ryan was questioning you about, is it your testimony that you are satisfied, did you say, in your own mind, that they have all been discharged, one way or the other?

A. One way or the other, by a sell-out or pay-off, something of [1537] that sort, yes. Well, if I owned them they are paid off, anyhow. The ones that I owned are paid off.

Q. In other words, you do not have a record, do you, of the exact manner in which each one of them was paid off?

A. I don't know what you mean. Do you mean cash, or a bank draft or a check or whether he had some buddy he was operating with who came in and made some payments for him? You mean those details? I don't keep records of those details. Whether Richard Roe comes in and pays for him, if he did I gave Stegmann credit. If he said it was Stegmann's money and to charge it to Mr. Stegmann's job, logging operation, I credited Mr. Stegmann.

Q. But, so far as whether or not those were paid up with funds advanced by Mr. Parker or any other

(Testimony of Otto W. Heider.)

person, that is something that you would not know; is that correct?

A. Well, I wasn't particularly interested in that. I was interested in getting the obligation paid. I didn't care particularly in what manner the payment was made.

Q. You had a number of inquiries along the spring of '50, did you not, as to the financial condition of Mr. Stegmann, whether or not it would be worth anyone's while to sue him to attempt to recover?

A. Inquiries from who?

Q. From persons in the Willamina, Sheridan, McMinnville area?

A. Well, different ones that were dealing with him sometimes would inquire of me what my opinion was of him. In fact, I think [1538] the bank did, of what I thought of him as a credit risk, and sometimes, such as Mr. Stegmann would have his logging operations, would not last too long on a particular operation. He would move from one to the other. Sometimes I know that loggers will take an operation, and sometimes they will make money on it. The next one they will go behind. When they do get behind you are likely to get some inquiries that you spoke of.

Q. You have not loaned Mr. Stegmann any money since 1949, have you?

A. Well, I don't remember whether that is the last document there or not, and it may be, I thought it was probably '50. It may be in 1949.

(Testimony of Otto W. Heider.)

Q. Don't you recall that you know a Walter Brown? A. Yes.

Q. A logger in that area? A. I do.

Q. He now lives in the old Arthur place?

A. Yes, I do.

Q. Don't you recall that he inquired of you some time in the spring of 1950 about a thousand dollars that Stegmann owed him on Stegmann's job at the Gopher Valley tract?

A. Yes, I think there was a question there on that, whether Stegmann owed him that money or not. It was a claim—it was rather involved, and I think there is a question there between Stegmann and Walter Brown whether or not Stegmann owed him the money. It seems like there was a question of some scale which [1539] involved—I just got a faint recollection of it—I think Walter Brown did claim that he had the money coming, and I may have contacted Walter about it, and there was some question there on the situation, but just what it was I don't know.

Q. Did you tell Mr. Brown at that time that Stegmann was flat broke and that the Parkers had taken him over, referring to the Parkers, Mr. and Mrs. Chet Parker?

A. Well, I think Stegmann, I think had moved at that time to Vancouver, Washington, although I am not sure, or had moved to McMinnville, one town or the other, and I think Brown consulted me about suing Stegmann on it, and I said, "Well, the first thing to do is to get you two fellows together

(Testimony of Otto W. Heider.)

on what is what, and who owes who." I may have told Mr. Brown that I didn't know of any assets that Mr. Stegmann could have had or did have that could be levied on. I told him I didn't have—after Mr. Stegmann had paid me off I didn't at that time try to keep any further track of him.

Q. Well, were you familiar at that time, in the spring of 1950, with whether or not there was a question of whether the Parkers had taken over Mr. Stegmann's logging operation in Gopher Valley?

A. Was I familiar with the fact that Parkers had taken over?

Q. Yes.

A. What do you mean by taking it over?

Q. Well, that Stegmann was out of the picture insofar as operating the property was concerned and that the Parkers had taken over [1540] his interest in the Arthur timber?

A. Well, now, I didn't know about it, them being interested in the Arthur timber. I thought Stegmann was still operating there in Gopher Valley. I didn't think there was any change in the situation so far as Gopher Valley was concerned. I didn't know there had been any change there. I know the Parkers own some timber up on Square Top, I know that, but I don't think Mr. Stegmann owned any timber up there. I think the Parkers had some there over in Tillamook County.

Q. Well, referring again to the Gopher Valley transaction, do you recall that apparently about

(Testimony of Otto W. Heider.)

May of 1951 you filed an amended complaint in a case in which you represented Mr. O. L. Arthur and for moneys that Mr. Arthur claimed were due him on account of timber taken from the property, and that you joined along with that an assigned claim of Walter Brown for about a thousand dollars?

A. The case was filed in the name of Arthur, was it?

Q. Yes.

A. Yes, and then Arthur subsequently died. I think that is right.

Q. And the moneys that Walt Brown claimed were due him were moneys during the time he claimed had accrued while he was working for Stegmann there at Gopher Valley, weren't they?

A. I believe it happened up there on East Creek or Upper Gopher, yes. [1541]

Q. Didn't you ascertain at that time that Mr. Stegmann had not done any additional logging on his own account since late 1949 or the spring of 1950?

A. I didn't have any occasion to check on him to see what additional logging he was doing. I didn't keep any further track of him.

Q. Referring, then, to the timber that you mentioned on Square Top, that was the area into which that Caterpillar tractor that went over—Stegmann was hauling into that area, was involved in an accident and rolled over a cliff into Clarence Creek or one of those?

(Testimony of Otto W. Heider.)

A. I think out there by the CC Camp somewhere, I think so.

Q. And in that particular transaction there, do you recall that you and Mr. Parker and Mr. Stegmann were the named insureds in the insurance policy covering that tractor?

A. I think there was insurance involved in the transaction, yes.

Q. Now, it has been shown here that the loss was paid by the insurance company covering that tractor by a check payable jointly to Mr. Parker and yourself and Mr. Stegmann, and that subsequently Mr. Parker bought the salvage on that Cat. Are you familiar with what Mr. Stegmann was doing up in that area at that time? That accident occurred May 25, 1950.

A. Well, whether he had a contract to log for Mr. Parker, or whether he was working for Mr. Parker, I don't know. He might have been just gyppo logging for Mr. Parker up there or supervising [1542] for him. I just don't know in what capacity he was operating up there.

Q. You knew that Mr. Parker and Mr. Stegmann had been associated in one way or another for quite some period of time?

A. Well, I knew that Mr. Stegmann had done some logging for Mr. Parker, and I didn't know just what the contract relationship was between them. I don't think I wrote up the contract if they had one. I think Stegmann did certain phases of the logging operation, and there are always several

(Testimony of Otto W. Heider.)

on the operation that are yarding, bucking or hauling. I don't know.

Q. But, insofar as any inquiry that the Parkers might have made of you in 1950 as to Mr. Stegmann's financial condition or responsibility, you knew at that time, didn't you, that they had—or that they knew as much about his financial responsibility as you, didn't you?

A. I never attempted to advise Parkers about his financial condition at all. All I told them was my connections with him had been fair and reasonable and that I considered him a good moral risk. That is as far as I went.

Q. Mr. Heider, I do not think we have ever met. My name is Buell. Do you recall within the last several months receiving a letter from my firm signed by me, requesting information as to the dates and amounts of final payment of these various mortgages that were recorded?

A. I did not receive one from you. I did from Mr. Ryan. [1543] I never received one from you. The only thing I ever received from you, from your firm, was a subpoena.

Q. Well, come to think of it, I was mistaken in that. I believe the inquiry was probably made by Mr. Pottenger of the McMinnville branch of the Title and Trust Company.

A. Well, he stopped in my office one day and asked me a few questions, then left rather hurriedly. That was all.

(Testimony of Otto W. Heider.)

Q. Didn't he ask you to write me a letter advising of the dates and amounts that those——

A. No, I think I told him that most of the mortgages were on record, and he asked me if they were paid. I told them they were paid. He wanted to know if I could give him a list of them. I said, "Well, they are on file. You can pick the list up when you are over at the Clerk's office."

Q. Well, then, you do not recall writing the firm of Griffith, Phillips & Coughlin a letter recently advising that in the summer of 1950 Mr. Stegmann was insolvent?

Mr. Jauregui: I want to object to that as not the best evidence. If they have such a letter, I think it is fair to produce it.

Mr. Ryan: I want to object to that, too, if that is the content of it, as a conclusion.

Mr. Buell: I want to apologize to the Court. As soon as we saw Mr. Heider this morning I started looking for it. I have not been able to put my finger on that. I had the office bring up [1544] what I thought was all of the remaining files down there, and we have not been able to find it. Otherwise I would not have beaten around the bush on that question.

The Witness: May I ask one question, Mr. Buell? What date is that letter that I wrote you?

Mr. Buell: It was dated in about October or November, 1952.

The Witness: That I wrote you a letter that Mr.

(Testimony of Otto W. Heider.)

Stegmann was insolvent? I would like to see the letter. I have no recollection of it.

Mr. Buell: I will have to find it during the noon hour, your Honor.

Mr. Ryan: For the purpose of the record, I move to strike this testimony.

The Court: Well, there is no testimony in there.

Q. (By Mr. Buell): While we are on the point, Mr. Heider, isn't it a fact that Mr. Stegmann was insolvent in the summer of 1950?

Mr. Ryan: Object to that question again as calling for a conclusion of the witness.

The Court: A statement of fact, also; objection overruled.

A. That he was insolvent? I had no knowledge of his insolvency.

Q. (By Mr. Buell): Do you know what assets Mr. Stegmann had in the summer of 1950?

A. Well, I could only answer you this way, that probably the only assets he had was just what is customarily used by a gyppo logger, a yard rack to load the truck, or probably if he still [1545] had his equipment—and I had no opportunity and occasion to check up on it—would be a Cat, yarder, loader, probably a truck.

Q. Probably most of it mortgaged?

A. What?

Q. Most of it mortgaged?

A. Well, it was not mortgaged to me at that time.

Q. But you did know, didn't you, about the

(Testimony of Otto W. Heider.)

existence of a claim of Mr. Ellis for the gas and oil and repairs?

A. Yes, I knew he was making a claim there. I knew he was making a claim, but——

Q. Then there was a claim of Mr. Arthur for about \$800 stumpage?

A. As I understand the Ellis claim you mentioned there, Mr. Stegmann claimed, of course, that some of these obligations there at that Richfield Station were run up by other parties without his authorization or knowledge, that is one reason about the payment of the same, that they would contract prior, without his prior consent, and he didn't find out about it until some time subsequently.

Q. You also knew of the Arthur claim and the claim of Walt Brown?

A. Yes, I knew of those claims.

Q. As a matter of fact, Mr. Heider, you let the case of Mr. Arthur against Stegmann be dismissed for want of prosecution, didn't you?

A. Well, I think the case was not proved or prosecuted for the [1546] reason that Mr. Arthur asked me to hold the matter up. He was carrying on some negotiation about the matter with somebody else here in Portland, and he just asked me to hold the matter in abeyance, and I did.

Q. You would not have let it be dismissed for want of prosecution if you thought there was any reasonable prospect of collecting a judgment against Mr. Stegmann, would you?

A. Well, he was out of the State at the time, or

(Testimony of Otto W. Heider.)

moved to Vancouver or something. I don't know just why the thing lapsed exactly, but at least I didn't press the matter any further.

Q. Than reserving that White truck, as I recall your direct testimony? A. Which truck?

Q. The White truck, the one that Mr. Ellis was claiming some kind of a possessory lien on. You say you very definitely advised the Parkers that Mr. Ellis had possession of the truck and that they might have to at least bring a lawsuit before they could get it?

A. I called Mr. Ellis on the phone and told him I thought he was illegally holding the truck, but he says, "Well, I have still got possession," and I said, "Well, that won't still hold it." I think I told the Parkers that there was a question there whether he would voluntarily surrender possession, but he had no legal right to hold possession.

Q. In other words, at the time that Mr. Parker purchased your [1547] interest in the truck, whether it was legal title or just a security of his, he was definitely advised at that time that Ellis had possession of the truck and was also claiming an interest? A. Oh, Ellis had possession of it.

Q. And you advised Mr. Parker, I think, at the time you sold your interest of it?

A. Yes, I told them that Ellis had contacted me.

(Testimony of Otto W. Heider.)

Examination by the Court

Q. Had you foreclosed on that truck and trailer prior to the time that the Parkers paid off your claim?

A. Well, foreclose—it was there and there was a couple of—it was two or three payments past due on that and I presume that I could have foreclosed in a summary manner, but I considered the equity there as substantial that Mr. Stegmann had, a substantial equity, and I was not doing anything toward foreclosing it. I had not foreclosed, no.

Q. You had not foreclosed?

A. I had not foreclosed.

Q. Then how did you happen to turn over the title, transfer the title to the property to the Parkers?

A. Well, they asked me if I would sell the paper to them, and I was rather glad to do that since Ellis was making a claim on it. I told them that if they wanted to pay the balance I would sign a note and mortgage without recourse and give them the title, [1548] which I did.

Q. Did they know that Stegmann was the beneficial owner?

Mr. Jaureguy: I didn't hear that last question.

The Witness: Did they know if Stegmann was the beneficial owner. Yes, they knew that, and that I was the legal owner, that is right.

The Court: They had not brought an assignment of interest of Stegmann?

(Testimony of Otto W. Heider.)

A. Well, what I think Mrs. Parker brought me, a written authorization to pay off me and signed by Stegmann; that is right.

Q. But, in any event, they knew that Stegmann was the beneficial owner?

A. Oh, yes, yes. I would not say for sure whether they brought me an authorization, but I felt that if Stegmann sent them up there to get papers there was no objection. At least, Stegmann never did make objection on that, but I turned the papers over to the Parkers.

The Court: Mr. Buell, go ahead.

Cross-Examination

(Continued)

By Mr. Buell:

Q. I want to ask one other question on the White truck, Mr. Heider, and that is that the Secretary of State's record here indicated that there was a mortgage or a contract on that truck to one of the Portland banks.

Did you acquire or pay off the—— [1549]

A. I think I paid off one of the Portland banks a small amount. Just what the amount is I don't know, but I think I paid off the bank a small amount.

Q. Was it your understanding that at the time you completed this transaction with the Parkers where they purchased your interest, whatever it was, in that White truck, was it your understanding they were acquiring from you the paper on

(Testimony of Otto W. Heider.)

that truck, that is, a mortgage or the title to the entire truck itself?

A. Well, my recollection is that Stegmann had already signed on both for the truck and trailer on line 1. Then I realized I did not know just whether they were going to sell it back or were helping Stegmann out in paying it off. Whether they were going to operate it themselves or buying the equity I didn't know.

Q.. In other words, your primary concern was just getting your balance taken care of?

A. That is right.

Q. And the rest of it was between Parker and Stegmann? A. That is right.

Q. Referring back a moment to the Caterpillar, or the tractor, I believe it was, an HD-14 that went over the bank, Mr. Parker, I believe, had a second mortgage on that piece of equipment also?

A. He may have. I don't know, I didn't check the records on that. They may have.

Q. Had Mr. Parker ever undertaken to guarantee any of Mr. Stegmann's indebtedness to [1550] you?

A. I never requested him to. That was not necessary.

Mr. Buell: I think that is all, your Honor, except I would like to have the opportunity to check a little further to try to find that letter.

The Court: Mr. Heider wants to go back home.

The Witness: If the Court please, it is agreed

(Testimony of Otto W. Heider.)

if he has such a letter signed by me on my letter, I won't deny the letter.

The Court: I am going to rule that if he has such a letter that it is pertinent. Do they know your signature?

The Witness: I think Mr. Jaureguy does. I think they both do.

Mr. Strayer: I would like to go a step further, your Honor. Just in the event that we do not find the original letter, I wonder if Mr. Heider has a copy of it in his file?

The Witness: I certainly have not. I do not recall such an occasion of Mr. Buell writing me in October, 1950, I believe.

Mr. Buell: 1952.

The Court: Mr. Heider, would you look in your files, and if you have such a letter will you notify Mr. Buell?

The Witness: Yes, I will send it down to him by special delivery.

The Court: No, you do not have to do that. Just put it in an envelope and send it down to [1551] him.

Redirect Examination

By Mr. Jaureguy:

Q. I notice a letter from the Secretary of State's office shows that in November, 1948, that title was in the name of Stegmann with a lien in favor of the First National Bank, and on July 22, 1950,

(Testimony of Otto W. Heider.)

which I think was shortly after the date of this check, two days after the date of the check, it was transferred to Chet Parker as both the registered and the legal owner. Would not that indicate whether Chet Parker was purchasing the entire interest in the truck itself?

A. Let us see the notation there. Which truck are you speaking of here? (Referring to document.)

Well, yes, that indicates that Mr. Parker was the complete owner of the truck.

Q. Would you say you had the right to foreclose that mortgage by selling that truck to Mr. Parker the way you did?

A. Well, yes, I had the right to. It was in default. I did not sell possession. I just sold the documents on the equipment.

The Court: Was the question whether he had the right to?

Mr. Jaureguy: Yes.

The Court: But the witness has previously testified that he didn't.

Mr. Jaureguy: I know, but I called his attention now to this certificate indicating that Parker obtained a legal title.

The Witness: You asked me the question if I had a legal [1552] right, and I think I had a legal right to foreclose, but I didn't foreclose.

Q. You said you didn't foreclose?

A. And I didn't foreclose. That is, I didn't go out and take physical possession of it.

Q. No, I understand, but what I am getting at,

(Testimony of Otto W. Heider.)

I have not gone into great detail with the Parkers on it, but I had understood that they purchased the truck from Mr. Heider.

The Court: Mr. Heider denies that.

Mr. Jaureguy: I understand that, your Honor. I understand that.

The Witness: They purchased my equity of the truck—or, I mean, yes, equity, I presume, but the real owner of the truck was Mr. Stegmann. I sold out and they simply stepped into my shoes by getting the documents and the title. Now, just what is the relationship between Stegmann and Parker, I don't know.

Q. Yes, I think it is straightened out now all right. Now, would you consider it unusual—for a man in Mr. Parker's position in the logging industry to loan money to someone in Mr. Stegmann's position and to just charge him 4% interest?

A. In my country out there around Grand Ronde and in there, why, I saw that very thing done last Friday by Shaw and Wideman because I drew the papers, and they made that kind of a loan to Mr. Beard because they wanted to get logs because it was the purpose of the loan just [1553] like——

Q. Are loans at that rate of interest unusual?

A. Not unusual when some operator or sawmill is getting the logs, or where the transaction is particularly advantageous to the party advancing the money, that rate is not unusual.

(Testimony of Otto W. Heider.)

Examination by the Court

Q. You testified that although you took security on all of these loans, that you did not go out and inspect the security? A. That is right.

Q. However, from your long experience in loaning money, didn't you have a pretty good idea of what the value of certain types of equipment was?

A. Yes.

Q. If a man had an HD-14 or a TD-18, you knew approximately what the value of that equipment was? A. That is right.

Q. So you did not really need to go out and take an actual physical inspection of it?

A. No, I felt that I didn't.

Q. When you loaned money, was there any correlation between the amount of the security and the amount of your loan? A. Yes, there was.

Q. About what was the ratio?

A. The ratio was to loan about two-thirds of what you consider the reasonable market value of the equipment.

The Court: That is all. [1554]

Mr. Jaureguy: That is all.

Mr. Buell: I finally found it, your Honor. I would like to have it marked for identification.

(Letter from Otto W. Heider dated November 26, 1952, to Messrs. Griffith, Phillips & Coughlin, Portland, Oregon, together with carbon copy of letter of November 24, 1952, addressed to Mr. Otto Heider, Sheridan, Oregon,

(Testimony of Otto W. Heider.)

from Griffith, Phillips & Coughlin, marked Plaintiff's Exhibit 92 for identification.)

Cross-Examination

(Continued)

By Mr. Buell:

Q. Would you examine Exhibit 92, Mr. Heider?

A. Would I do what?

Q. Examine it and see if you can identify that signature?

A. Yes, that came from my office.

Q. Is that your signature or stamp?

A. Well, it is a rubber stamp that Mrs. Lawrence uses, same thing as my original signature.

Q. Do you recall dictating the letter?

A. Yes, I recall dictating it.

The Court: Show it to Mr. Ryan.

The Witness: Yes, that is mine.

If the Court please, may I ask Mr. Buell if he has got a copy [1555] of the letter that he wrote me?

Mr. Buell: No, I am sorry I do not. As the letter indicated, I was mistaken and it was not I that wrote you. It was Title and Trust Company that wrote you inquiring.

The Witness: Oh, Title and Trust Company. Mr. Ryan, who is the letter addressed to?

Mr. Ryan: Messrs. Griffith, Phillips & Coughlin, Electric Building, Portland 5, Oregon.

Mr. Buell: We will offer it in evidence, your Honor.

(Testimony of Otto W. Heider.)

Mr. Ryan: I object to the entry of this, your Honor, without a proper foundation regarding his knowledge of the subject matter thereof, leading to a conclusion.

The Court: Prior inconsistent statements. Do you want to join in the objection, Mr. Jaureguy?

Mr. Jaureguy: No, I think it is admissible under the circumstances.

The Court: I will overrule your objection. It may be admitted.

(Documents referred to, previously marked Plaintiff's Exhibit 92 for identification, were received in evidence.)

Mr. Buell: We have nothing further, your Honor.

Mr. Jaureguy: That is all.

The Court: Thank you, Mr. Heider. You are excused from further attendance at the trial. [1556]

Mr. Ryan: Your Honor, I have another question of Mr. Heider.

The Court: Very well.

Cross-Examination
(Continued)

By Mr. Ryan:

Q. With regard to the Arthur matter which you have testified to, was there a dispute arising between Mr. Stegmann and Mr. Arthur that you recall?

A. I think there was a dispute on both the claims, both the Brown and Arthur claims. They

(Testimony of Otto W. Heider.)

were involved, and that involvement is quite considerable, and I have to get a statement in my office files, and if I knew I was going to be examined on that I could have brought it down, but I have the statement of the involvement in my office file, and just what the dispute was between them, it is something on the scale and a fire got in there and some of the logs that they claimed were delivered and some were not delivered, and it was quite an involved matter.

Q. Now, your initial testimony was that Mr. Arthur asked you to hold that on the proceeding?

A. Hold it in abeyance while he was doing something, checking on it.

Q. Is that the extent, or the last time you heard from Mr. Arthur on the matter?

A. In the meantime, I think, he died.

Q. So it is now your testimony that the reason you went no further was simply because Mr. Arthur asked you to hold off on the [1557] matter?

A. At the time it simply was held in abeyance. Nothing further was done.

Q. You have read this letter submitted with reference to Mr. Stegmann's financial condition?

A. Yes.

Q. Since that time you have also had opportunities to review your files with regard to Mr. Stegmann?

A. Yes.

Q. Have you anything to add in addition to that? Do you have any additional statement to make regarding it?

(Testimony of Otto W. Heider.)

A. I do not have Mr. Buell's letter that he wrote to me. Evidently Mr. Buell wrote me a letter or answer to the letter of Title and Trust Company or he sent me one that Title and Trust Company sent him that Mr. Buell forwarded to me, apparently. I think this is right, my statement there, but they were probably paid out by other parties, including one Mr. Parker paid me.

Of course, in 1950 I was not too familiar with Mr. Stegmann's condition there, but I think I recall now that whether he had any equipment—I doubt if he had very much equipment there in late 1950.

Q. Was that——

A. This was this letter. He was on an operation, you know, whether this was the Brown or Arthur operation or not, but it was some operation, and this might have reference to that operation [1558] that he had paid too much for stumpage and his overhead was so much that he did probably become insolvent as lots of loggers do. One year they are doing well and the next year they are broke. I think that is true of mostly all logging gyppo operators. Sometimes they are in clover to their neck and the next time they are involved in financial difficulties. That seems to be the history of the logging industry.

Q. That is the extent of your explanation with regard to the statement of 1949; is that right?

A. That would be it, and Mr. Stegmann and I had known in many cases. The next year his credit

(Testimony of Otto W. Heider.)

rating would be okay, hit a good piece of timber, and the next year he would be down.

Q. Were you aware that there was a fire on that Arthur property, on the Murphy-Nelson piece?

A. Yes, I knew about the fire, a bad fire.

Q. Now, your testimony with regard to Arthur's paying him out, does that refer to your testimony here this morning?

A. That is in regard to Mr. Stegmann paid out. Then I think there was a deal where Mr. Stegmann traded out or sold somebody else a piece of equipment, somebody else bought my note.

Q. In other words, that payment was for the compensation of the mortgagee for money that was paid out on the loan?

A. After he sold it to other parties, traded it off, then in the first instance I was paid off.

Q. And the reason for that sale is that the Parkers made the [1559] sale to third persons?

A. I don't think I ever inquired as to the reason of the sale. I don't think I——

Q. Do you have any idea of the balance—the amount paid in by Mr. Stegmann on that White truck at the time it was transferred?

A. Well, you mean how much Parkers paid me?

Q. No, how much Stegmann had paid him?

A. I think Stegmann had paid over \$2,000 on it prior to the time that Mr. and Mrs. Parker paid me off.

Mr. Ryan: That is all.

The Court: Any further questions?

(Testimony of Otto W. Heider.)

That is all, Mr. Heider.

(Witness excused.)

The Court: Recess until 1:30.

(Noon recess taken.) [1560]

Afternoon Session—1:30 P.M.

(Trial resumed.)

MYRON E. PARKER

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Myron Parker? A. Yes.

Q. And are you the son of Chet and Lois Parker? A. Yes.

Q. You have been staying down at Medford the last few weeks or so? A. Yes.

Q. Your home is regularly at Vancouver, is it?

A. Yes, it is.

Q. Will you tell us how old you are?

A. Sixteen.

Q. Sixteen. Do you recall any trips that you took up to Hood River to Lost Lake in August and September, 1951? A. A few.

Q. Do you recall about the middle of August at your father's request, going into the office of the

(Testimony of Myron E. Parker.)

title company there in [1561] Hood River about the middle of August, 1951?

A. Yes, it seems that I do.

Q. Just tell us about that, will you?

A. Well, I remember the time he sent me in to talk to the man in there about sending a title policy or some kind of—I don't know what it was, I don't know anything about it—to Portland. I went in there. I know a secretary or somebody was in there, and I asked for the man, and she said he was not there, would be back pretty soon, and I walked up the street——

Q. Did you tell her what you wanted?

A. No, I didn't; I don't think I did.

Q. You do not think you did? A. No.

Q. Then what did you do?

A. And was going up the street, and I saw this man.

Q. How did you know it was this man?

A. I didn't. I was just taking a wild guess. I asked him if he was the man of the Title and Trust Company, and he said yes, he was, and so I briefly told him to send the papers to Portland, and we would pick them up there.

Q. Did you tell him who it was, or who you were? A. Yes, yes.

Q. Or, I mean, who it was that sent you or anything?

A. Yes, well, I don't know. I told him my name, yes, and I imagine that he presumed that I was Chet Parker's boy. [1562]

(Testimony of Myron E. Parker.)

Q. You told him the name, Chet Parker?

A. Yes.

Q. Chet Parker wanted——

A. Yes, the papers sent to Portland.

Q. The title report or whatever it was sent to Portland? A. Yes.

Q. You say you just took a chance that that was the man from the Title and Trust Company?

A. That is right.

Q. Did you have any more clues than that that he was the man?

A. Oh, I don't know. I guess maybe you can pick out an office man. It is just something, you know, I guess.

Q. Did he have a brief case, or anything?

A. Yes, he had some papers with him. I don't know whether he had a brief case or not. I can't remember, but, well, he looked like an office man. He was walking that way, and he was close to the office. I thought it wouldn't hurt to ask him.

Q. Then do you recall being up to Lost Lake a little more than two weeks later?

A. About the 31st of August.

Q. When your father was there, and there were some other men there?

A. Well, yes, I remember——

Q. Who were there besides your father; do you remember?

A. I remember once it was Paul Winans and his brother. I think [1563] his name is Ross, and

(Testimony of Myron E. Parker.)

Walt Stegmann and myself and my father, and other than that I don't know.

Q. What was being done that day; did you know?

A. Well, I was cutting a little brush for Mr. Stegmann, and he was running some lines around the lake there, and Mr. Winans.

Q. What were you doing particularly?

A. Just cutting brush, doing whatever Mr. Stegmann told me.

Q. Then you got around with Ross Winans, did you?

A. Yes, I was.

Q. You made a deal with him that day, did you?

A. Yes, I talked to him about hunting and fishing, and Mr. Winans gave me a bear hide, and we just talked. I like to hunt and fish a lot, and so does Mr. Winans, and we had quite a bit in general.

Q. Did you see your father talking to Paul Winans?

A. Yes, I remember they had quite an argument.

Q. Where were they when they had the argument?

A. Well, they were — there is a creek runs through the swamp. They were up there standing on the bridge, or by the bridge, in there close, as I remember, and that is about all I know where they were at.

Q. Did you hear anything about the argument on what it was about?

A. Well, I heard Dad say that he thought, I guess, that he wanted the timber, and I guess that

(Testimony of Myron E. Parker.)

Winans went in the direction where there was a little timber, and he was maybe a little [1564] perturbed about that, and that is about just the general—that was the general thing they were talking about and arguing about. Other than that, I don't know. There might have been other details.

Q. Do you know about how long they were there arguing?

A. Oh, quite a while, I guess. I don't know.

Mr. Jaureguy: You may take the witness.

Cross-Examination

By Mr. Ryan:

Q. Was Mr. Stegmann up there with you? You have testified on the day you recall him?

A. Yes.

Q. You said you were cutting brush. What was he doing?

A. He was running lines.

Q. He was running lines?

A. Yes.

Q. Was he present at the time this conversation was taking place between your dad and Mr. Winans, Paul Winans?

A. Well, I don't know. I don't remember. We were, well, just there. I just don't know.

Q. You were all up in the area there at the same time?

A. Well, we were in that general area.

Mr. Ryan: That is all the questions I have.

(Testimony of Myron E. Parker.)

Cross-Examination

By Mr. Krause:

Q. The day you went to the title company in Hood River to tell [1565] them about sending this report to Portland, where was your father?

A. Well, he was in town there because I know I couldn't drive. He would have been in town.

Q. He was in Hood River; is that right?

A. Yes, he must have been.

Q. Was your mother there, too?

A. No, mother was not there.

Q. What time of the day was it, about, when you went to the title company?

A. I don't know. It has been a long time ago, and I can't remember that.

Q. Had your father parked his car somewhere in Hood River and where you were going to meet him again after you went to the title company's office?

A. I just don't know.

Q. About how long were you away from him on that occasion?

A. Well, I don't know that either.

Q. Well, did he drive you to the title company's office?

A. He could have.

Q. And let you off in front of the office?

A. Well, he could have, but I just don't know.

Q. You don't know whether he let you off in some other part of Hood River and you walked over to the title company's office?

A. That is possible. [1566]

(Testimony of Myron E. Parker.)

Q. But you don't have any recollection of it?

A. No, I do not.

Q. Of what happened? A. No.

Q. You do not know how long it was between the time that he sent you to the title company's office and that you saw him again?

A. Well, I would have no reason to know. I mean, it would not have been probably all day.

Q. He didn't leave you there in Hood River by yourself all day? A. Oh, no.

Q. You are quite sure of that? You do not know what business, if any, he was attending to while you went to the title office? A. No, I do not.

Q. What were you told to do at the title office?

A. Well, I often run errands for him, and I guess maybe he figured I could do it.

Q. Well, I am sure he did, but what did he tell you to do?

A. He told me to tell the man to send the papers to Portland, and we would pick them up.

Q. Just to send some papers to Portland?

A. Yes, he didn't specify which papers.

Q. He told you, of course, to tell him whose papers they were? A. Yes.

Q. Had you been in the title company's office before? A. No. [1567]

Q. That was the first time you were ever there?

A. Yes.

Q. This manager of the title office, you had never seen before? A. No.

Q. Before you met him on the street?

(Testimony of Myron E. Parker.)

A. No, I don't believe I had.

Q. At any rate, you finally identified him and asked him to send the Parker papers to Portland?

A. Yes.

Q. Did you pick them up at the Portland office later? A. I don't remember.

Q. You do not know whether you did or didn't?

A. No.

Q. Did you drive back to Portland that day?

A. I couldn't say that, either.

Q. You do not know where you went from Hood River? A. No, I don't.

Q. You did not go up to Lost Lake on that day, though? A. Well, I don't know.

Q. You think that that was later that you did make this one trip to Lost Lake?

A. Yes, it was.

Q. You think it was later? A. Yes.

Q. About how much later? [1568]

A. Oh, I don't know. I really couldn't say because——

Q. You do not remember whether it was a couple of days or a couple of weeks?

A. Oh, towards maybe a little more than a couple of days, maybe a little less, maybe a little more than two weeks.

Q. You went up to Lost Lake quite a number of times that summer, though, didn't you?

A. A few times.

Q. How many would you say?

A. I haven't any idea.

(Testimony of Myron E. Parker.)

Q. Well, now, you know—were you up there two or three or four times, or ten or fifteen times during the summer of 1951?

A. Well, I don't know. I didn't count them.

Q. Don't you remember whether it is closer to two, three or four or ten or fifteen?

A. Well, let us even it up and say five.

Q. You think about five?

A. That is purely a guess.

Q. Did you ever stay up there overnight at Lost Lake? A. Yes, I think I did, yes.

Q. Once? A. Once.

Q. When you were up on these other trips, Myron, did you go on to this property that you were on the day that you were doing the [1569] survey? A. Yes, I think I did.

Q. Whenever you went up there, I suppose you did go on that property? A. In that vicinity.

Q. In the vicinity of the property. You do not know what sort of line Stegmann was trying to run?

A. I didn't pay any attention to it. I didn't have any reason to. All I did was what he told me to do.

Q. They had not told you what they were trying to survey up there? A. No.

Q. Have you been on any other surveying trips, Myron?

A. Oh, not actually surveying. I don't know anything about it. I have cruised in some of our cruises, and things.

(Testimony of Myron E. Parker.)

Q. Have you been on cruises and also on surveying trips?

A. Well, I went one time and camped with our cruiser, but otherwise, no.

Q. Myron, what is it causes you to remember this argument between your father and Paul Winans?

A. Well, probably the thing that made me remember it was father very seldom ever argued with anybody. I remember that is why I remembered it.

Q. Well, except for that argument, when did you hear him in an argument prior to that time, and with whom was it?

A. I don't know; I don't remember. [1570]

Q. Do you ever remember his having an argument with anybody since that time?

A. Oh, I can't say as I have.

Q. That is the only argument that you can remember now that you heard your father in?

A. Well, he has probably been in arguments, but when he has been in arguments, I have not been around, I guess, because, like I say, he very seldom ever argues.

Q. Yes, well, of course, you couldn't hear it unless you were there.

A. That is right.

Q. But you do not recall of any other case at all where you have ever heard your father in an argument with another man?

A. Well, no, not like that for a long time.

Q. When did anybody first ask you, Myron,

(Testimony of Myron E. Parker.)

whether you remembered any such argument up there after the thing happened?

A. Well, the first person that has mentioned it—let's see, I guess this morning Mr. Jaureguy asked me something about it.

Q. Is that the first time anybody mentioned this argument since you were up there on that property?

A. Yes.

Q. The first time? A. And yourself here.

Mr. Jaureguy: That is the second time.

Q. (By Mr. Krause): I am the second time, then. I am talking [1571] about the first time, Myron. So the first time anybody asked you about whether you heard that argument was this morning when Mr. Jaureguy asked you? A. Yes.

Q. Did you have any difficulty remembering it at that time, Myron?

A. Well, I thought about it a little bit and, like I say, it is outstanding.

Q. They didn't hit each other, did they?

A. No, there was no blows.

Q. Threatened to hit each other? A. No.

Q. They were just having an argument, and it was quite a heated argument?

A. Well, it seemed so.

Q. Nobody else in the whole party had any argument with anybody else that day, did they?

A. Not that I know of.

Q. Mr. Stegmann and Mr. Winans didn't have any argument about anything?

A. Not that I know of.

(Testimony of Myron E. Parker.)

Q. And your father and Mr. Stegmann didn't have any? A. I don't know.

Mr. Krause: I think that is all. [1572]

Cross-Examination

By Mr. Strayer:

Q. How old are you, Myron? A. Please?

Q. How old are you? A. Sixteen.

Q. What was the date of your birth?

A. January 25, 1937.

Q. Nineteen what? A. Thirty-seven.

Q. Then in August of 1951 you would have been 14 years old—15 years old?

A. Well, something like that, I guess.

Q. What were you doing up at Hood River on this date that you went in to the title company?

A. I don't know.

Q. Where had you been?

A. I don't know that either.

Q. How long were you in Hood River that day?

A. Please?

Q. How long were you in Hood River?

A. That day?

Q. Yes. A. Well, I just don't remember.

Q. You don't know whether you got there early in the morning? [1573] A. No, I do not.

Q. Or whether you got there the day before?

A. I really do not.

Q. Or when you left or where you went?

A. I really don't. I had no occasion to remember.

Q. Do you have any recollection of what business

(Testimony of Myron E. Parker.)

your father was on? A. No, I do not.

Q. How were you dressed?

A. Well, I either dress up, or else I am dressed in logger's clothes.

Q. How were you dressed that day?

A. That day, since my mother was not with me, I was probably dressed in logger's clothes.

Q. What kind of clothing was that?

A. Well, levis and wool shirt, and an old hat, shoes, the way I dress.

Q. Do you dress that way when you are going out in the woods? A. Yes.

Q. Well, then, is it your best guess that you were out in the woods that day?

A. Well, I don't know. I dress like that at home.

Q. Oh, you dress that way whether you are going to the woods or not? A. Usually. [1574]

Q. How long has it been since you thought about that visit to the title office from the date that it happened until the present time?

A. Oh, not so long.

Q. How long? A. I really don't know.

Q. Well, have you talked it over with your father and mother, or either one of them?

A. No, I have not. They said that they are in trial.

Q. What is that?

A. They said that they had been having court.

Q. Yes, but you have not been here in court, have you, up until today? A. No.

(Testimony of Myron E. Parker.)

Q. Now, before today, did your father and mother talk with you about this visit to the title company? A. Well, yes, a little bit.

Q. When did that happen?

A. Oh, a couple, three days ago, maybe; maybe the last—I don't know, a day ago.

Q. What did your father and mother say to you about it?

A. Well, they asked me if I remembered being in there.

Q. In where?

A. In the Title and Trust office.

Q. What else did they ask you? [1575]

A. That is all.

Q. That is the only thing they said to you, so you have not since, from the time that it happened in 1951 until today, you have never had occasion to relate the story of just how you went into the title company, how you talked with the girl, and how you went about to find the man; is that right?

A. Well, I might be idly thinking about it, I think, sometimes with things I have done, but otherwise, no.

Q. Did anyone tell you what the testimony of the people from the Title and Trust Company office was? A. No, sir.

Q. You never heard what the testimony of Miss Vose or Mr. Miller was on the subject?

A. No, sir.

Q. Let me see if I have got your testimony

(Testimony of Myron E. Parker.)

straight. You say you went into the title company at your father's request to ask them to send his papers to Portland, right? A. Yes.

Q. You did not know what kind of papers they were going to be? A. No.

Q. And you didn't ask for the papers right there? You didn't ask if they were ready?

A. Yes, let's see, I didn't ask if they were ready.

Q. Well, then, your father must have told you to go to the title company to get his papers, didn't he? [1576]

A. Yes, he said send them to Portland, tell the man to send them to Portland.

Q. He didn't request you to bring the papers, then, if they were ready?

A. Well, yes, it seems that he—I guess if they were ready he wanted me to bring them, but I guess maybe he figured they would not be ready and says to send them to Portland and we would pick them up there.

Q. Well, then, you found out that they were not ready from the girl, did you?

A. Well, I don't know.

Q. How did it happen you went to hunt for Mr. Miller? A. Who is Mr. Miller?

Q. Mr. Miller is the man that you say you went to find. A. Oh, oh.

Q. Why did you go to find him? Why didn't you just tell the girl to send the papers to Portland?

A. Well, as I remember, I asked the girl about

(Testimony of Myron E. Parker.)

it, and she says, "Well, the man will be back pretty soon." And so I figured that that was that, either she didn't know anything about it or I didn't know.

Q. Well, then, you must have gone to find the man to find out if the papers were ready; is that right? A. I figured on coming back.

Q. What is that? [1577]

A. I figured on coming back and seeing the man.

Q. Oh, you left intending to come back? You didn't go to look for the man?

A. No, I didn't go especially to look for the man on the street, no.

Q. How did it happen you found him, then?

A. Well, as I said, the man was walking down the street and had these papers and looked like an office man, and it doesn't hurt to ask.

Q. He had a handful of loose papers and you——

A. No, I don't know whether they were loose or not.

Q. What kind of papers were they?

A. I don't remember.

Q. What do you mean when you say he had some papers?

A. Well, as an office man does, he usually has a brief case with him.

Q. Did this man have a brief case?

A. I don't remember, but it seems that that gave me the indication to think he was the Title and Trust man.

Q. What did you say to him when you saw him?

A. Well, the general thing I asked him was

(Testimony of Myron E. Parker.)

whether the papers were ready, and apparently they were not; and so to send them to Portland, my name was Parker.

Q. Did you give him your father's name, did you?

A. Yes, that would have been the sensible thing to do, which I [1578] think I did.

Q. What is that?

A. That would have been a sensible thing to do, which I did.

Q. But you don't think you told him who you were?

A. Well, I don't know.

Q. Now, on this occasion when you were up there on the property helping with the survey, you worked there all one day, did you?

A. I don't know.

Q. What is that?

A. You mean we were there all day?

Q. Yes.

A. I couldn't say.

Q. Was Mr. Parker there with you, your father?

A. Yes, my father was there.

Q. What was he doing?

A. Well, as near as I can tell, he was just there.

Q. What did you understand the job was that was being done there? What were they trying to accomplish?

A. Well, I don't know, the only reason I was there was I was cutting brush for Mr. Stegmann.

Q. You were what?

A. I was cutting brush for Mr. Stegmann.

Q. Were you sent up there by your father to help him cut the brush?

(Testimony of Myron E. Parker.)

A. Well, I don't know, maybe it was just that I was there, and [1579] I was convenient to cut brush.

Q. Who did you understand was buying this timber?

A. Well, I don't know that, either.

Q. You have no idea of whether it was your father or Mr. Stegmann, or who?

A. That is right; I had no interest.

Q. You heard no discussion there of who was buying the timber?

A. No, I didn't, not that I knew of.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: I have no questions.

Mr. Ryan: No questions.

The Court: That is all.

(Witness excused.)

The Court: We will recess for ten minutes.

(Recess taken.)

The Court: Mr. Jaureguy?

Mr. Jaureguy: I would like to recall Chet Parker for a few more questions. [1580]

CHET L. PARKER

recalled, testified as follows:

By Mr. Jaureguy:

Q. Since we had our last session of Court, have you, Mr. Parker, had occasion to have your memory refreshed any more with respect to this Jeep business down at McMinnville? A. Yes, I have.

Q. What is your recollection now of some facts that you might have gotten wrong when you testified before?

A. The main thing was that Mr. Colvin, being one of the owners, I dealt with him usually the last part of the deal in most any deal, and he wanted \$550 and I wanted only to pay him \$450, so that was as near as we could get together, and I suggested to him that we go out on the street and flip a coin, and if it came down one way I paid \$550 and if it came down the other way it would be \$450. That seemed to have been one of my more fortunate days because it was \$450.

Q. It came up your way?

A. And I consequently made the deal on \$450.

Q. Did he ever tell you about Walt Stegmann having an earnest money receipt or anything?

A. No, at any time none of those people have ever told me. I have seen him many, many times since then. [1581]

* * *

The Court: Is that your case, Mr. Jaureguy?

Mr. Jaureguy: Of course, I would hate to say I

rest with a lot of reservations, but that is what I would like to do.

In the first place, I understand from counsel that Title and Trust, they are willing to stipulate that in the event the Court finds the defendants are entitled to recover, the defendants, or either of them, is entitled to recover attorneys' fees from the plaintiff, that the Court may fix the amount of attorneys' fees without the necessity of our producing any evidence as to the reasonable value of the services.

Mr. Strayer: That is right, your Honor. [1589]

* * *

BERYL SWAILS

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mr. Swails, you are the manager of the United States National Bank in Sheridan; is that correct? A. Yes, sir. [1593]

* * *

Cross-Examination

By Mr. Buell:

Q. Has Mr. Stegmann applied to your bank for any loans since the U. S. National took over the Sheridan bank? A. Yes, sir.

Q. When was the last time, approximately? Just place it by year, if you can. A. It was in 1949.

(Testimony of Beryl Swails.)

Q. Since that time you have not had any occasion, then, to look into Mr. Stegmann's credit?

A. Not since he paid us out in December.

Mr. Buell: No further questions.

Mr. Jaureguy: No questions.

The Court: Did you testify that he applied for credit in [1599] 1949?

The Witness: Yes.

The Court: Will you tell us what action the bank took?

The Witness: Well, we advanced him, we renewed some of the mortgages that were—advanced him more funds.

The Court: He did not have a line of credit with the bank, though, unsecured?

The Witness: No, it was always on a secured basis.

The Court: Any questions?

Mr. Krause: Nothing.

Q. (By Mr. Jaureguy): Could I ask you what additional funds you advanced him in 1949?

A. Well, I don't recall exactly, but I think at one time he had an outstanding loan of \$10,000 as the tops.

Q. During 1949?

A. Yes, 1949. That was the one he paid out in December.

Mr. Ryan: I have no further questions.

Mr. Jaureguy: No questions.

The Court: You are excused.

(Witness excused.) [1600]

WALTER STEGMANN

recalled in his own behalf, having been previously sworn, testified as follows:

Direct Examination

By Mr. Ryan:

Q. Would you hand Mr. Stegmann Exhibit 48 again, if you please?

(Document presented to witness.)

Q. (By Mr. Ryan): Mr. Stegmann, you have that Exhibit 48 there to refresh your memory. Could you turn to the mortgages involving Courtemanche there?

(Letter dated January 17, 1953, from the Courtemanche Acceptance Corporation to Mr. John D. Ryan, marked Defendant Stegmann's Exhibit Number 204 for identification.)

(Documents, satisfactions of chattel mortgages, Nos. 21808 and 19692, dated October 25, 1949, and January 27, 1949, marked Defendant Stegmann's Exhibits 205 and 206, respectively, for identification.)

Q. (By Mr. Ryan): Handing you Exhibit 204 for identification, do you recognize that?

A. Yes, I recognize that.

Q. What is that?

A. That is a letter that I had requested Courtemanche to send Mr. Ryan for satisfaction of contract or mortgage that I had with him. [1601]

Q. Now, you have seen these two mortgages here

(Testimony of Walter Stegmann.)

which are in Exhibit 48, one Number 19692 running to L. A. Courtemanche from yourself and dated January 29, 1949, and another chattel mortgage in here between the same parties, Number 21803—or 8—it isn't entirely clear—dated October 21, 1949. Have you paid Mr. Courtemanche under that?

A. Yes.

Q. You paid those off?

A. Yes, they must have been paid off on or about the date the payments were due.

Q. Have you received satisfactions of those mortgages?

A. Well, only the paper I requested from—he may have given me a receipt for them, paid in full, and then I requested him to send the satisfaction that they were paid to Ryan.

Q. That is to me? A. Yes.

Q. These are the two satisfactions you received, or the papers, as you call them?

A. Yes, they would be.

Q. Those are Exhibits 205 and 206. These are papers which we discussed regarding a stipulation, Mr. Buell.

The Court: Is there any objection?

Mr. Buell: No objection, your Honor.

The Court: They may be admitted.

(Documents previously marked Defendant Stegmann's [1602] Exhibits 204, 205 and 206 for identification were received in evidence.)

Q. (By Mr. Ryan): Mr. Stegmann, would you

(Testimony of Walter Stegmann.)

state to the Court, would this refresh your memory if you look at Exhibit 204, to inform the Court as to the dates upon which those payments were made?

The Court: Has that been admitted in evidence?

Mr. Ryan: Yes, your Honor, it has.

The Court: Does that exhibit show the dates upon it?

Mr. Ryan: Yes, it does. It speaks for itself.

The Court: All right, then, no more testimony.

Q. (By Mr. Ryan): There is an additional mortgage in Exhibit 48 to a man by the name of Bailey. I think it is the last one in the——

A. Yes.

Q. How much is the amount that that mortgage was given for, Mr. Stegmann?

A. Well, it says \$658.25 here.

Q. What was the date of that?

A. That was in February 10, 1950.

Q. Did you ever pay that mortgage to Mr. Bailey?

A. Well, not in cash money, but I did move his Cat. He had a small Cat, and I moved his Cat two or three times, and I also gave him some equipment to log with, which was more than equal to the amount of money that I owed him. [1603]

Q. Was it an understanding between you at that time it would satisfy that indebtedness?

A. That was the understanding between us that that would be payment that he would receive for his payment and which he needed at that time, and he

(Testimony of Walter Stegmann.)

would take that instead of money and then paid it.

Q. Do you know where Mr. Bailey is now?

A. No, I do not. As I understood, he sold his Cat and left and went back East some place. I have tried to locate him and I have not had any luck locating him.

The Court: Anything further?

Mr. Ryan: Nothing further than that, your Honor. Oh, I have some further questions to ask Mr. Stegmann.

Mr. Stegmann, you have testified that you obtained the option from Mr. Winans on August 11th, which was a Friday or Saturday?

A. Well, it was on a Saturday, if that was August 11th, I mean, as it was on Saturday, the day of the week.

Q. You have also testified that you saw Mr. Chet L. Parker in McMinnville on August 12th; is that correct?

A. Well, I think that is correct because August—it was on a Sunday, and I am sure, looking at the calendar, I remember it was August 12th.

Q. Would it have been possible that you might have telephoned Mr. Parker sometime on the morning of the 12th regarding this deal?

A. Well, it is possible that I may have called him, but I don't [1604] recall ever calling him, I mean, because I did see him that day. He was down to my place or his brother's place, which is adjoining my property in McMinnville, and I did see him on that day.

(Testimony of Walter Stegmann.)

Q. If you had called him, would it have been with respect to the loan arrangement?

A. It is possible, if I would have called him, it may have been to tell him that I had issued, or had wrote, a check on this loan arrangement, but I don't remember calling him.

Q. Would you tell the Court just where your house is situated with respect to the house of Oscar Parker? Is it your house or your brother's house?

A. No, it is my house. I think there was some misunderstanding in the depositions that it was my brother's house, but it was my property, me and my wife's at that time, and Mr. Parker's brother, Oscar Parker's property adjoin our back yards, adjoining.

Q. Where was it you met Mr. Parker on this morning; was it on this property?

A. Well, I think I was cutting the lawn or maybe working in the garden, and he was over to his brother's place and near his garage there, which is a few feet, and it was right there either in between on my—he may have been on his brother's property, and come over and said hello.

Q. I mentioned the word "morning"; are you certain of the time of the day on the Sunday, August 12th, that you saw Mr. Parker? [1605]

A. I am not exactly certain of the time of the day, but it was during that day. I would say probably morning or noon. I couldn't say exactly what time it was.

Q. To go back to August 11th, at what time of

(Testimony of Walter Stegmann.)

the day was it that you and Mr. Winans—or approximately when did you and Mr. Winans conclude the deal with regard to him giving you the option?

A. Oh, I don't know the exact time. It would be pretty hard for me. It seems like it may have been in the afternoon, or along towards evening. I am not sure.

Q. Now, there has been some testimony that the question of the title to this property was discussed at that time. Would you tell the Court the extent of your recollection regarding that transaction?

A. How do you mean, the title being discussed?

Q. I mean what would you remember regarding that transaction between yourself and Mr. Paul Winans?

Mr. Strayer: Pardon me, what date?

Mr. Ryan: August 11th.

The Witness: All I can remember happened that we were talking about the option. He was going to give an option on it. I wanted to purchase it, and he was writing it on his typewriter in his little office there, was typing it up, which I think he typed four or five copies probably, or different ones, and eventually he typed up one, and we went to take this description, put it in this option, why, he mentioned that he had a title [1606] policy around there, and he was going to take the description off from that, and he searched around in his big pile of papers there, and he couldn't find it and so he had some tax receipts, and he took the description off

(Testimony of Walter Stegmann.)

from there, and he said that his sister, Ethel Winans, had a deed to it, but he didn't show me that.

Q. Did he show you the deed?

A. No, I think he took the description of the property off from the tax receipts and put them on, that is where he got the description.

Q. Did he ever show you a title insurance property that he mentioned?

A. No, I never did see it. He was not able to locate it. He searched for it, or said he thought it was among them papers. He was looking for that but didn't find that.

Q. Was that the extent of the discussion with respect to title insurance and the deed and the title that was given to you by Mr. Winans?

A. Yes.

Q. On Sunday, you made arrangements to meet Mr. Parker in Hood River on the following Monday or the 13th? A. Yes.

Q. Where did you meet Mr. Parker; do you recall?

A. Well, seems like it was up at a restaurant. It would be on the west edge of Hood River. I think it is on the right side of [1607] the road, I believe. That is where we agreed to meet, there at the restaurant.

Q. Do you remember what car you were driving?

A. Oh, I am just positive just exactly which car I was driving. I did drive, and it is hard to say.

(Testimony of Walter Stegmann.)

I had a Mercury, 4-door sedan, and I had a Buick convertible.

Q. What color was the Buick convertible?

A. It was yellow.

Q. Were they Oregon or Washington licensed cars?

A. They were Oregon license plates on my cars.

Q. Both of them? A. Yes.

Q. What then happened. Did you go directly to the property on Lost Lake?

A. Well, after I met him, yes, I think he drove up in his car, and I drove up in my car, and we drove up to the lake, and—yes, that is the way it was.

Q. You went up to the property and to the lake, then? A. Yes.

Q. What did you show Mr. Parker up there? Did you show him the area, or just exactly how long were you up there with him?

A. Well, it seems like I was not there very long. It may have been an hour or so, but I am not sure. We had to walk in there a little ways, about three-quarters of a mile down this trail, and I showed him approximately where the line was. There [1607-A] was a tag on a tree there, and I showed him that to line his place up there, and I showed him where the line was, and I believe I took him up to a quarter corner, I am not sure. There is an iron stake in the ground with a brass cap on it, and I think I probably told him approximately where I had went when I had looked at the timber and made a rough cruise

(Testimony of Walter Stegmann.)

of it and told him there was probably some nice timber there. After all, I was trying to sell it, and I left.

Q. Had you told him that Paul Winans was the owner of the property at that time?

A. I am sure I had. In fact, I believe that I might have showed him the option or have give him the—or he may have seen the option that I did have on the property.

Q. When you left the premises up there, would that have been around noon or before noon?

A. It must have been right around noon. I am not just sure. It could have been a little after noon, too, that I left up there.

Q. Did you have any understanding with Mr. Parker as to when you were going to see him again?

A. The only understanding I had, that if he liked it and would like to buy the option—that is what he was interested in—if he took it, why, he would like to buy the option, and that is what I wanted to sell, and that he could come over to my place at The Dalles. I told him where I was staying, and if he wanted anything more, why, he could come in and look me up. I told him where I would be. [1608]

Q. Now, when was the next time you saw Mr. Parker?

A. Well, the next time I saw him after leaving the lake property was that evening. I believe it was, I don't remember, just getting dusk or sometime that he went over at my place in The Dalles.

Q. Now, you have heard testimony here during

(Testimony of Walter Stegmann.)

the course of the trial of two gentlemen, the Forest Rangers. I believe their name was Mr. Parrott and Mr. Petersen? A. Yes.

Q. Their testimony is that they thought that on August 13th in the evening about five forty-five they saw a gentleman that looked like you at the Forest Ranger Station in the company of Mr. Parker. Were you at the Forest Ranger Station on that day?

A. Well, I am not positive it was on that day, but I am sure that I was never there with Mr. Parker. I am positive of that.

Q. Would you have had any reason to go there that day?

A. I don't believe I would have had any reason to go there that day.

Q. Had you been there before? A. Yes.

Q. In whose company?

A. I had been there, I believe, twice before, probably. I know one time that I went up there with a Mr. Floyd Marsh.

Q. You heard this testimony regarding your being there with Mr. Parker. Is it your testimony now that you had not been there? [1609]

A. I have never been there at the Forest Ranger's place with Mr. Parker.

Q. Approximately when was the hour of the evening, then, that you did see Mr. Parker on August 13th?

A. August 13th, well, that is pretty hard to say. I just don't remember the exact hour, but I do

(Testimony of Walter Stegmann.)

know it was in the evening, though. It could have been dark, or it may have been getting dusk. I am not sure.

Q. You have already testified to the transaction that took place between yourself and Mr. Parker when you sold Mr. Parker your option, that took place in The Dalles? A. Yes.

Q. Were you in The Dalles alone, or with your wife, or what was the situation just at that time?

A. Well, my wife was not feeling very well then, and I was out looking for timber, and most of the time quite often she stayed with her folks in Wilamina, and that evening, as I remember, I don't believe she was there. I am pretty sure that she was not there.

Q. Would you tell us what understanding you had with Mr. Parker regarding your future dealings with this property?

A. You mean what was said about it that evening?

Q. Yes, what was said or what your understanding was, if you can tell us what was said.

A. Well, all I know was that the future dealings with it, that [1610] he was to give me \$25,000 for my—for the option, for signing of it, and that I would sign the option to him, and, oh, I was to pay the other \$4,000 on the option, which I felt was still part of the option, and that same evening I think he left, and then he come back again that evening and wanted me to take a cruiser up there and show him this property, and I believe, at that time, or

(Testimony of Walter Stegmann.)

it may have been before, that he wanted me to survey out this reserved area. There was a reserved area on this option that the Winans family were wanting to keep for themselves. He wanted me to see that it was surveyed out.

Q. That understanding, was that understanding regarding a survey reached that night?

A. I am not sure. I believe it was because he wanted me to go up there and show, when he came back to show this cruiser, which was Mr. Kenny, the corner and establish him on the property.

Q. Was it your understanding that night that you had sold Mr. Parker your option?

A. On what night?

Q. The night of the 13th? A. Yes.

Q. Now, between the night of the 13th and the night of August 18th, did you have reason to see Mr. Winans regarding this property, or can you remember?

A. You mean between what dates was that?

Q. That would be the Monday night at which you purchased the [1611] option—or Mr. Parker purchased the option from you, and August 18th.

A. I don't believe I seen Mr. Paul Winans in between the 11th, but on the 13th—or not the 13th—but the 18th was the day that I seen him.

Q. That is right. I mean, you did see him on the 18th, of course? A. Yes.

Q. Did you take Mr. Kenny up there on the 14th, Mr. Roy Kenny who testified?

A. Well, I am not just sure that it was the 14th

(Testimony of Walter Stegmann.)

or the 15th. I am not positive of the date, but it was one day in, you might say, the first part of the week.

Q. Did you show him a quarter corner, or what did you show him?

A. I took him up on the property, and I showed him the quarter corner, and I showed him approximately where I had went, and I think we probably talked about the nice appearance of the timber and all.

Q. You have testified to activities on August 18th in regards to this property, and you have heard your brother's testimony with regard to it. Would you tell us again who was up there on the 18th?

A. On the 18th, yes. My brother Carl, Paul Winans, and he had two surveyors there, I think one Bogar and a Mr. Haynes were up there, and I don't know whether there was anyone else [1612] there. There may have been, and Ross Winans may have been, but I am not sure that day. Yes, I believe he was there.

Q. Did you meet Mr. Winans on the property, or did you meet him at his place; do you know?

A. I met him at his place, and then he went—either he went up with me—I am sure he went up with me in my car and my brother to the property.

Q. Now, you have testified on a good part of this before. Did you at any time on that day, and at what time did you, if you did, did you discuss

(Testimony of Walter Stegmann.)

with Mr. Winans the fact that Mr. Chet Parker had now purchased your option?

A. Yes, I am sure that I told him in the morning as we were going up, either on the road to the property or it may have been walking in on the property down the trail that we reached going down, the Government trail around the lake there until we reached the property, that I mentioned to him that I had sold my option to Chet Parker on the property.

The Court: What day was that?

Mr. Ryan: This was on August 18th, your Honor. At least that was in response to the question.

Q. At the time you told this to Mr. Winans, do you know whether anybody else was present?

A. Well, I don't know. It seems like the surveyors, they gathered up their equipment and were taking off down the trail, and I believe we were a little bit behind them, and I believe just [1613] Mr. Winans and me were talking. Possibly my brother may have been following along behind, but I believe the two surveyors had already went down the trail ahead of us.

Q. Did you spend a good portion of the day up there on the premises?

A. Well, it seems like we spent practically all day up on the premises, yes.

Q. Was there any discussion regarding school lands between yourself and Mr. Parker — Mr. Winans, rather?

(Testimony of Walter Stegmann.)

A. I think it may have come up between Mr. Winans and I that it had been, Section 16 was a school section, had been a school land, and that possibly he might have mentioned that his father had bought it a long time time ago, but that was about the extent of it.

Q. Well, now, you are speaking of what he possibly might have said up here on the Lost Lake property on August 18th when you were there surveying; is that what you are referring to?

A. Yes.

Q. Do you remember whether he did mention school lands or not?

A. Well, he might have mentioned that it was—no, I just don't remember. It could have been that he did mention it was school lands, but——

Q. You heard the testimony of Mr. Haynes here that the property—that he was of the impression or that he recalled that there was some discussion regarding the title to this property and just [1614] precisely—I cannot repeat his exact words, but do you recall any such discussions that you overheard here in the case between Mr. Haynes and yourself or between yourself and Mr. Winans when Mr. Haynes was present?

A. I don't remember such conversation. The fact is, I don't think we were together very little, if any. Mr. Haynes was running his surveying apparatus and transit, and I was sometimes handling the tape, and Mr. Winans was out ahead slashing brush, and I don't recall. If any was, it

(Testimony of Walter Stegmann.)

might have been that his father had purchased it a long time ago, and this was a school section, Section 16.

Q. You can tell us whether anything was said to you regarding a defect in the title, can't you?

A. No, there wasn't any.

Q. You mean you cannot tell us?

A. There wasn't any discussion that I heard.

Q. Now, on this previous testimony as brought out here that you people were up there right until evening on the 18th of August——

A. It must have been probably close to four or five, I don't know, something like that, around five o'clock.

Q. Then you returned down to the gas station near Dee, Oregon?

A. Yes, we went back to his little office there at Dee, or it is across from his place there.

Q. Did the surveyors come down with you, or did they come down [1615] in a separate vehicle?

A. They drove up in a separate car, and they drove their own car back that evening.

Q. Did Carl Stegmann come down with you?

A. Yes, he come down. We, I am sure it was him, Carl Stegmann, Paul Winans, and myself that drove down in his car, and the surveyors, they come down in their other car ahead of us or just following us.

Q. You say you are sure it was him, Carl Stegmann, yourself and some other party?

A. I meant him, I meant Carl Stegmann. I said

(Testimony of Walter Stegmann.)

“him” first. I meant Carl Stegmann, Paul Winans and myself were in this car that we drove back from Lost Lake to Paul Winans’ place.

Q. Would you tell us what took place at Paul Winans’ gas station there in Dee?

A. Well, yes, there was—the two surveyors, they wanted to hurry and leave and get back to Portland and they were doing some figuring there. They were figuring outside, I think on their car, and kind of comparing. Well, they had a few notes they were figuring and comparing, a few notes. They were figuring up the time or the hours they worked there, and Mr. Paul Winans was preparing to pay them off so that they could get started towards Portland, and I think he said that he had finished typing up a piece of paper before him and I could get on with our business and that he paid the surveyors off and they [1616] left.

Q. Had you discussed with Mr. Winans the signing of anything or that any paper was going to be drawn up before this?

A. Well, they was supposed to be an additional payment of \$4,000 on the option, and that was what I was going to pay him for, and there had to be an extension of time, too. He wanted an extension of time to survey out this reserved area because it had not been surveyed out, as I think, and seven days was supposed to be the period that it was supposed to be surveyed out and staked off, and it had not been, so he wanted additional time to stake it out.

(Testimony of Walter Stegmann.)

Q. When he paid off the surveyors, where did he pay them off; do you remember?

A. I don't—he paid them off at his office there. I think he drew up a check, or he may have had it in his pocket, but I think the surveyors were outside and he may have went in his office to write a check. I am not sure, but he paid them off outside and they left.

Q. Where was Carl Stegmann at this time?

A. Well, I am not quite sure. I think he was, could have been talking to them or just walking around outside or at that time I think he was probably talking to one of the surveyors. Then when he paid them off they left.

Q. Did Mr. Chet L. Parker show up that evening?

A. Yes, he showed up there just about the time, I believe that— [1617] it was a little while after, I believe, the surveyors had left and Paul Winans was typing up that election to purchase and the extension of time for setting up this reserved area, and Mr. Parker come up there.

Mr. Ryan: There is one of the exhibits, Plaintiff's Exhibit listed as 1-B. I don't believe it has been admitted. It is available?

Mr. Buell: I think that is just a copy. I think the original——

Q. (By Mr. Ryan): In order to go forward with this, would you hand this to Mr. Stegmann, please?

(Document handed to witness.)

(Testimony of Walter Stegmann.)

Q. At the time this was being typed out, had Mr. Parker come there, before the typing of the document, the Election to Purchase, had been typed out; do you remember?

A. Well, I don't remember exactly, but he might have come just about the time it was finished. I don't know, or I think he come after it was finished, typed out.

Q. Now, you have testified on your deposition that you did not think that you signed any papers there. Can you remember how many papers were typed out?

A. Well, I think there was two or three copies of this piece of paper here and—but I am not sure, it seems like there was two or three copies.

Q. What is your testimony now? Do you think that you may have [1618] signed that document that is in front of you?

A. Well, it looks like my signature, but I didn't think I signed it, and I may have where there was so many—there were several copies there. It is possible, but I—I may have signed it, but I know I signed the extension for setting out the reserved area. I remember that clearly, signing it, because I was supposed to survey out this reserved area, and I could agree on the extension of time getting it staked out because it had not been accomplished.

Q. Can you recall any conversation regarding Mr. Parker's interest in the option when this question of the Election to Purchase was offered to you?

(Testimony of Walter Stegmann.)

A. Well, I remember telling—what was that question again?

Q. Do you have any memory of any conversation regarding Mr. Parker's interest in the option at this time you have spoken about earlier in the——

A. I had spoken about it earlier, and I am sure I mentioned it at the time he was typing this up, and I didn't really think it was necessary for me to sign it. I thought it might have been part of the option, but I agreed on the extension of time, and I think it might have been that time that Mr. Parker come in and it was explained—Mr. Parker was introduced, or he introduced himself, and he could see no reason for signing it, and that him and Mr. Winans were dealing from then on. That was the understanding. [1619]

Q. Who said that?

A. Mr. Parker and Mr. Winans were dealing from then on.

Q. No, but I mean, were those words used?

A. What?

Q. Mr. Parker and Mr. Winans were dealing from then on, did Mr. Parker say that to Mr. Winans, or did you say that, or how——

A. Well, I told Mr. Winans that I had sold my option to Mr. Parker; that him and Mr. Parker were then dealing. Then I think probably when Mr. Parker come in there and was introduced or introduced himself that I said, "This Mr. Parker is the one that bought the option, and you and him are

(Testimony of Walter Stegmann.)

dealing from now on.” I mean, I am not sure that that is the words, but I think——

Q. Then it is your testimony that you cannot remember whether you signed the document or not; is that correct?

A. No, I can’t remember. I mean, the signature looks like it is my signature.

Q. You do believe it is your signature?

A. I believe it is, but I can’t remember signing it.

Q. That you remembered?

A. I may have—undoubtedly those papers were there and just signed it. I don’t know.

Q. I would like to have this handed to Mr. Stegmann for identification. That is a photostatic copy, unsigned, Mr. Stegmann.

A. I see it is. [1620]

Q. Does that refresh your memory at all? That is a photostatic copy of the Notice of Election and acknowledgment of notice—Notice of Election and Extension of Time.

A. Yes, I remember paying him the money, the \$4,000, and signing this Extension of Time to set out this reserved area, and it is possible that these papers were here, signing it—I might have just signed this unknowingly, that I was sure that I had not signed it.

Q. Well, the document to which you are referring, do you know where the original of that is?

A. This photostatic copy?

Q. Yes.

(Testimony of Walter Stegmann.)

A. Well, I don't remember, I don't know exactly. I think that this is a copy of the one that I got that evening, or whether I got it or whether it was give to Mr. Parker when he had arrived there, I am not sure of it, but I have never been able to identify it.

Q. Did you retain your own copy, or did it go to Mr. Parker; do you remember that?

A. Well, it went to Mr. Parker.

Q. Did you stay there on August 18th? Did you leave with Mr. Parker or did you leave prior to Mr. Parker?

A. Well, I couldn't rightly say whether I left—everybody left, I think, about the same time. I mean, everybody meaning that Mr. Parker and my brother and I might have left, went out [1621] of the office about the same time. I am not sure, but I know that my brother and I together left from Paul Winans' shortly after I had paid him that \$4,000 and agreed on an extension of time.

Q. Was there any discussion in your presence at this time in Paul Winans' office during the transaction you have just described regarding a defect in the title or anything regarding that at all?

A. You say any defect in the title?

Q. Yes, was there any discussion regarding anything wrong with the title?

A. There was never any discussion regarding anything wrong with the title. I think if there was any discussion on that evening of the 18th it was that Mr. Winans attempted to look for his title

(Testimony of Walter Stegmann.)

policy and was going to show Mr. Parker that he had a title policy and that his sister had the deed to the property, and I think that was—I remember at one time that he had looked for the title policy. The fact is, two times he looked for the title policy.

Q. On that day?

A. No, on that one day, that day, and on the 11th when he give me the option he looked for the title policy.

Q. Is that the extent of your recollection of what took place there, that you have given to us?

A. I believe it is. [1622]

Q. With regard to the title? A. Yes.

Q. Now, when was your next occasion, Mr. Stegmann, to contact Mr. Winans?

A. Well, I don't remember. It seemed like it was, yes, it was another time that he had surveyors up there again. He wanted them to help survey off this reserved area, but I don't remember the date that it was, but I think that it might have been on the 20th or 21st or 26th, something like that, of August.

Q. He had surveyors up on that area itself?

A. Yes, he had a couple of surveyors up on the Lost Lake area, that property up there.

Q. Do you know their names?

A. One was a Mr. Haynes, and another man was up there. I think they were—I believe they were there two days, but there was one day that I am sure I was not there. I think I was there on the last day they were there, was on a Sunday.

(Testimony of Walter Stegmann.)

Q. On that occasion, was there any discussion regarding the title to the property? What were you doing up there on the premises?

A. Well, I was trying to help establish this reserved area, to get the reserved area set out there as it was supposed to be in the option in the first place, and here all this time had gone by and it still had not been set out.

Q. Now, there is testimony that when you were up—there is [1623] testimony that you were up on Lost Lake on, I believe, the 28th of August, at Lost Lake, on the 28th of August, and on an occasion when you and Mr. Parker and his son, Myron, went up there on that occasion.

A. What was that?

Q. Do you recall an occasion when you went up with Mr. Parker on the property?

A. I don't recall the exact day, but it was after these two surveyors from Portland had been up there. I mean, it was after they had been up there. I think it might have been on the 28th or 29th. I am not sure of the exact day that Mr. Parker and his son and myself went up there and surveyed on this reserved area.

Q. Did you see Mr. Winans that day at all?

A. Yes.

Q. What took place, and where did that take place, your meeting with Mr. Winans?

A. Well, he was supposed to go along, I think, to survey out this reserved area, and we stopped

(Testimony of Walter Stegmann.)

there to see if he wanted to go along and was prepared to go along, and we—I mean, I and Mr. Parker and Myron Parker were there, and he had other work to do, it seemed like, that he couldn't go up there. He wanted to go, but he had these other things to attend to, and he didn't go.

Q. Were you up on the premises for some time that day, or do [1624] you remember?

A. Well, I think it was probably the biggest share of the day.

Q. Did you see Mr. Winans further that day, or was that——

A. Well, we seen him first that day, and I don't know as we stopped. It was getting about dusk, I believe it was, or it was in the afternoon, and I don't remember stopping at his place going back.

Q. Now, on August 31st, on the day where there has been some testimony here that you and Mr. Winans and Ross Winans and Chet Parker and Myron Parker were on the Lost Lake area premises, do you recall that day?

A. You mean when Chet Parker and Myron Parker and Paul Winans and Ross Winans and myself were up there?

Q. Yes.

A. You say that was the 31st of August?

Q. Yes, according to the testimony.

A. I don't know the exact date, but I am sure, though, that that was the exact day when the reserved area was finished, and that we went up there to agree on the reserved property and set stakes

(Testimony of Walter Stegmann.)

out and mark the trees and to conclude this reserved area.

Q. Do you recall overhearing any conversations or being present at any conversations between Paul Winans and Chet Parker on that day?

A. Well, I don't—I wasn't present, I don't believe, at any [1625] conversation, only that surveying these lines, why, maybe I would be, pass by him, or walking along the trails, you know, this line, why, I might pass by him, or everybody seemed to be doing a little bit of helping in the surveying, and that I remember the one time when I was close by they were having a discussion, a heated discussion there in the trail. They were—I don't know whether they were arriving at the volume or acreage or what they were discussing, but they seemed to be having quite a discussion there.

Q. With respect to the reserved area, were you being consulted by Mr. Winans as to the parts to be reserved in that survey?

A. How did you mean that exactly?

Q. Mr. Winans, when you would be running a line attempting to determine just what area would be reserved, was Mr. Winans dealing with you?

A. Dealing with me?

Q. Yes, was he talking with you about it?

A. No, he wasn't dealing with me, but sometimes he may have mentioned when I was running the lines, which it was my job to do, run the lines, and he was wondering if we went up a little farther with the line what it would look like, and we had

(Testimony of Walter Stegmann.)

quite a time deciding. I couldn't tell where they wanted to go. I would survey up one line, and then it seemed like him and Mr. Parker would change their mind, and then I would come back and we would start over on another angle. [1626]

Q. You said he and Mr. Parker would change their minds? A. Well, it seemed like it.

Q. Were Mr. Parker and Mr. Winans consulting together to reach a decision regarding the reserved area?

A. They had been doing quite a bit of talking. What they were talking about I wasn't able to hear.

Q. Why would you say they changed their minds?

A. Well, I guess they changed their minds because I surveyed a little ways, would measure up, and we would set some stakes, and then we would come back and change it, so evidently it was not right, because I had to do it over again.

Q. At the conclusion of this day, had the reserved area been staked out?

A. At the end of this day, yes, they finally agreed on a reserved area there where—it was staked out.

Q. Was there any discussion in your presence to yourself or by anyone else, by Mr. Paul Winans regarding the state of the title to this property?

A. Well, I didn't hear any discussion on it at all. I mean regarding the state of the title.

The Court: Have you finished the 31st of August?

(Testimony of Walter Stegmann.)

Mr. Ryan: I think I have, yes.

The Court: We will take a recess.

(Recess taken.)

WALTER STEGMANN

recalled, testified as follows: [1627]

Direct Examination

(Continued)

By Mr. Ryan:

Q. At the end of your work on the 31st, what further arrangements were made, Mr. Stegmann, with regard to your part in working out the survey of the reserved area?

A. You mean what was I supposed to do yet?

Q. What were you supposed to do next?

A. Well, as I was supposed to survey out and set out the reserved area to see that it was—lines were there right, why, I was supposed to—whenever Winans was ready to have the deed written up, why—when these descriptions could be put into the deed properly, why, I was supposed to go up and see that the lines of this reserved area were put properly in the deed.

Q. What were the arrangements regarding that? When were you to do that?

A. Well, I was supposed to keep in contact with Mr. Winans, I guess it was, or whenever he had time, at his convenience, to go up and help arrange

(Testimony of Walter Stegmann.)

this reserved area and see that the lines were set down properly.

Q. When was the next time you got together with him for that purpose?

A. I believe it was on, it was on a Saturday. It was in September, I think that would be—was at—I think September 8th, I believe it was.

Q. Is that Saturday, September 8th, that you mentioned here in [1628] the previous testimony?

A. Yes.

Q. Where did you meet Mr. Winans that day, at Vawter Parker's office?

A. No, I think I met him, I was supposed to meet him at a service station or something, I believe it was, or downtown. I forget just where it was I was supposed to meet him.

Q. Did you go to Vawter Parker's office from there?

A. I don't believe we went to Vawter Parker's office first. I think he made arrangements to have Mr. Haynes come up from Portland and help work out this description, and I believe that we went to the surveyor's office at first in Hood River there.

Q. Did you work there, or did you just go there?

A. Well, we went there. Mr. Haynes and Mr. Winans and myself went there, and Mr. Haynes and I started working out this reserved area, and there had been a map drew up on it, and I believe Mr. Parker from the notes I had given him had had a map drawn up on it, I think.

Q. Who had that map in their possession?

(Testimony of Walter Stegmann.)

A. I think I had the map, I believe. I am not sure whether we may have just roughly sketched out one to figure out the reserved area, but anyway we had made a rough sketch before to figure out the amount of acres actually involved in this reserved area there, and it seems like Mr. Parker said there was an arrangement there that if he wanted some more land in this reserved [1629] area, why, he could go ahead and have some more land as long as it didn't take in any timber to amount to anything, just as long as it was confined to the swamp area there.

Q. You are speaking about having a map at the time you were at the surveyor's office?

A. Yes.

Q. Do you know whether you had that map, Mr. Winans had a map, or Mr. Haynes had that map of the three people there?

A. I couldn't rightly say just who had the map, but it seems like there was one map there, and whether I had it, or whether Mr. Winans had it, I am not positive of that.

Q. Did you and Mr. Haynes have quite a bit more work to do?

A. Yes, seems like Mr. Winans was not exactly satisfied with my work. I mean, whether he was satisfied or not, he wanted Mr. Haynes up there to check it, and I just gathered the reason he was there, and we went together and was working out this, trying to figure out how to set it down briefly, get it—I mean, small enough so that you could put

(Testimony of Walter Stegmann.)

it in a deed with a description that wasn't so lengthy, and we were working on that, too.

Q. Were you following the lines on a map in order to guide yourself in writing out the description?

A. Yes, we were following the lines on a map, and I think we sketched probably another, even made another rough sketch, but I don't remember exactly. [1630]

Q. You say Mr. Winans was unhappy. Was there any discussion or dispute that took place there at the engineer's office?

A. Well, no, there was—we had not arrived at any—I mean just how to word it, set it down. We knew how the lines were to run, all right, but it was kind of a problem working it out so the wording was all right, and he wanted Haynes to check and see that he was getting enough acreage, or something there.

Q. Was Mr. Haynes working it out in figures?

A. Yes, he did some figuring there on the acreage, too.

Q. Were you concentrating on that problem, too?

A. I was concentrating on it, too. We were both concentrating on it there. I mean, working out this problem.

Q. It wasn't just a mechanical task, then. It was consuming both your time and attention; is that correct?

A. Yes, it was.

Q. Well, now, did you stay at the engineer's office very long or——

(Testimony of Walter Stegmann.)

A. We were there quite a while. I can't really say how long. It seems like, I know one thing, that he had to go back, Mr. Winans did. It seems like he had to go back to take his children or get his children and take them to a doctor or something and that Mr. Haynes and I was there, and then I believe he come back before we had even got the thing completed.

Q. That is, while you were there still at the——

A. We were still at the engineer's office, and whether they [1631] close on Saturday afternoon or not I am not sure, but I knew the engineer was gone and that Mr. Haynes or I, I believe it was, when Mr. Winans knocked on the door, had to go let him in so it must have been after dinner that we were still there working in the office because there was no one else around there and the doors was locked.

Q. Had you been out for dinner or your lunch?

A. I don't know whether I went out for a sandwich. I may have, and I think there was someone in the office all the time because we had no key there, and I don't think there was——

Q. Did you go to Vawter Parker's office from there?

A. Well, after that we went to Vawter Parker's office, and I know we went there, and I don't think we had been to Vawter Parker's office before that. We may have been there briefly and then went over to the engineer's office.

(Testimony of Walter Stegmann.)

Q. Had you ever met Vawter Parker before?

A. Not before that day, no.

Q. How did you introduce yourself in Vawter Parker's office? Was his secretary in there when you got in there?

A. I don't know whether—it seems like there was a girl there doing some work or picking up some papers, but I don't remember exactly.

Q. Did you go there in company with Mr. Winans or Mr. Haynes?

A. I went there in company with Mr. Winans and Mr. Haynes.

Q. What happened then? What took place in the office? Did [1632] you continue to work?

A. Well, yes, we continued to work on this description. It seems like we had—Mr. Haynes and I had kind of agreed on and wrote it down. I don't remember whether he typed it out in the engineer's office or whether he wrote it down in pencil, but still Vawter Parker seemed to think that some of the wording was wrong in it and wanted to change it and that it was not quite right, and we were doing quite a bit of work there on it.

Q. Did you object to the changes?

A. Well, some of it I did not agree with him on the changes because—

Q. Why didn't you agree with him?

A. Well, it was the way I had set it out, and I didn't quite—it didn't sound like it was right. He wanted, for one thing, as I remember distinctly, there, we had approximate distances between our

(Testimony of Walter Stegmann.)

stakes that I had set down there, like a hundred feet to another stake, was approximately a hundred feet, and to be exact, why, you have to be very sure of your measuring to be exact so I was not very certain of my surveying that I could be exact so I didn't want him to put exactly so many feet from one stake to the other, and it seemed like then there was—when he wanted to set down the line, the center line running through the center of the property, why, it seemed like there was something about that, I don't remember, but it didn't agree with me anyhow, the lines either run around the property or around [1633] the reserved area.

Q. What was the working arrangement? Did he then tell you and Mr. Haynes to go back and work it out again?

A. I don't remember whether we went back to the surveyor's office again, but he had a couple rooms there in Vawter Parker's office, and at a time or two there we were in his office while Mr. Parker, Vawter Parker, was taking care of some other people he had in there, and Haynes and I was, and I think quite often Mr. Winans was in there discussing this thing, too, and trying to arrive at a simple way to put the description in the—we had a lot of pieces of paper with descriptions on and nothing really simplified.

Q. These pieces of paper with descriptions on, were they deeds, or were they just descriptions that you were working on?

A. As I remember, they was just descriptions

(Testimony of Walter Stegmann.)

mostly, but I think at one time he—or maybe more than several times, I guess it was that he—we thought that we had arrived at a description, a simple description, and he started to write it down in the deed or the kind of paper, I think, you would probably write it in the deed, and then when it would come back, why, either the girl made a mistake on it in copying some of the pieces right, or during the meantime, while it was getting typed up, why, we might have thought to change it one way or the other.

Q. What office were you and Mr. Haynes working in most of [1634] the time?

A. Well, sometimes I believe we had the reception room there in his office, and another one, I am not sure, but sometimes we were in a different office than where Vawter Parker and his——

Q. Were you and Mr. Haynes required to move from one office to another in order to permit Mr. Vawter Parker to go ahead with his work?

A. Well, sometimes we would pick up our pieces of paper and go around the table there. I believe he had a desk or something he was not using so much in the other room, and we used it, I believe it was.

Q. Did they reach any final draft of this description that night? This is Saturday, the 8th.

A. They may have reached the final—no, I am sure they didn't because they had arrived at kind of a simple description, but I had to go back there Monday and we worked all Monday on it, so it was

(Testimony of Walter Stegmann.)

almost all Monday so I am sure it was not arrived at a deed and put in deed form on Saturday.

Q. Now, during the course of the day on Saturday, the 8th, Mr. Paul Winans, in Mr. Vawter Parker's office, did he discuss with you a claim of the United States Government to this property?

A. Well, he never discussed with me. If he was discussing it, I never heard it unless he was discussing it with Vawter Parker.

Q. Did he discuss it with you personally?

A. No. [1635]

Q. Did you overhear him discussing it?

A. No, I never heard it.

Q. Would you hand to Mr. Stegmann Exhibit 311, please?

(Exhibit presented to witness.)

Do you recognize that from having seen that previously during the trial?

A. I remember seeing this before, yes, in the trial here.

Q. You have seen it in my office. Had you seen it before you saw it in my office?

A. No, I had not, to my knowledge.

Q. On any time on September 8th, did Mr. Winans show you that paper and ask you to sign it?

A. Not that I recall, because I don't remember ever seeing that, but I had seen so many papers, descriptions and these deeds, but I don't remember ever seeing this.

Q. Well, do you remember Mr. Winans asking

(Testimony of Walter Stegmann.)

you to sign a paper of any type regarding a claim of the United States Government to that property?

A. No, I don't remember him doing that.

Q. Did Mr. Winans ask you that? A. No.

Q. Did such a subject ever come up in your presence when you heard it when Mr. Haynes was present?

A. Well, now, I don't know. I mean, as I never did hear it discussed because we were working on this description. [1636]

Q. That is my question. In your presence, when Mr. Haynes was present, did Mr. Winans ever say anything to you regarding this or to Mr. Haynes regarding this, that you heard?

A. I never did hear it.

Q. Did Mr. Vawter Parker offer such an instrument to you for signature? A. No.

Q. Did Mr. Vawter Parker, on September 8th, Saturday, say in your presence anything regarding the title to this property?

A. Well, he could have discussed it with Paul Winans in my presence, but I never did hear him discuss anything like that.

Q. My question is, did he say anything to you?

A. No.

Q. Did you hear anything regarding this?

A. Not that I remember. I didn't hear any discussion.

Q. Now, when you left on September 8th, did you take any papers with you?

A. On September 8th?

No. 14201

United States
Court of Appeals
For the Ninth Circuit.

CHET L. PARKER and LOIS M. PARKER,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
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AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
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Transcript of Record

In Five Volumes
Volume IV
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Appeals from the United States District Court for the
District of Oregon

MAY - 7 1954

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(Testimony of Walter Stegmann.)

Q. Yes, this is the same Saturday we are discussing.

A. If I did take any papers which I may have had a copy of the description on a piece of paper, I may have had that, but I never did have a copy of the deed on Saturday.

Q. You may have taken a copy of the description?

A. I may have because I had a copy of it in—I mean, Haynes and all of us were working on it. We had several copies, ten or [1637] fifteen, I think, I imagine, around there.

Q. When you left on the 8th, did you feel that that description was satisfactory?

A. Well, the description that I had, I thought was worked out satisfactorily.

Q. Well, did you feel that that description was going to be satisfactory to Mr. Chet Parker?

A. I thought it would be.

Q. Did it follow your understanding of the area he wished reserved?

A. What?

Q. Did it follow your understanding of the area he wished reserved?

A. Yes.

Q. The testimony here has been that you again came back to the office on Monday, the following Monday?

A. Yes.

Q. Did you have reason to discuss this matter with the Parkers on Sunday?

A. I don't know as I discussed it with them or not on Sunday. I don't know whether—no, I didn't discuss it with them on Sunday unless it was—un-

(Testimony of Walter Stegmann.)

less I happened to give Mr. Parker a copy of that description, but I don't know.

Q. Are you speculating on that? Do you remember what happened on Sunday? [1638]

A. I don't remember exactly what happened on Sunday, no.

Q. Will you tell us, then, when you next returned to Vawter Parker's office on Monday?

A. I don't remember what time it was when we got there. I believe it was in the morning in Vawter Parker's office, but I know we had to go back there to finish up this description in the deed.

Q. Now, you say you had to go back to finish up the description in the deed? A. Yes.

Q. The description as you had it when you left Saturday night you said was satisfactory. What more remained to be done?

A. I thought the copy of it I believe I had was satisfactory, but it seems like it had to be typed back on to the—I mean, I don't believe they had it made up in deed form. It was on a deed that was just a copy, and it seemed like Winans wanted some additional land up there, and that had to be added on, and that he wanted reserved out, some additional land.

Q. This subject, did it come up on Monday?

A. Well, I think he mentioned it. It could have been mentioned on Saturday that he did want some additional, but he was not sure, and then——

Q. Now, what happened there, I mean, at the

(Testimony of Walter Stegmann.)

discussion, then, with Mr. Parker, Chet L. Parker, or what was the situation?

A. Well, they did, I think they discussed this out there when [1639] they were setting out because I had surveyed up a little ways first how it would come out approximately if he did want some more land, and then we didn't set the stake out there to contain this additional land. I think we made just a rough survey out there to see where it would be, and I think during the course of their conversation or talk, Mr. Parker had been talking with Mr. Winans, I think it was on the day they were up there, Saturday, how this reserved area, that if Mr. Winans did want this additional area, why, he could have it, let him have it as long as it didn't take in too much timber there, if he could keep all the good timber, and it seems like they had agreed on it, so Winans wanted this additional area, and it had to be set out in the reserved.

Q. Now, this problem didn't come up until Monday, or had it been discussed on Saturday?

A. Oh, I think it had been discussed. It may have been discussed a little on Saturday, but Winans didn't know for sure whether he wanted it that day or didn't want it that day.

Q. Did he bring that up when you came in Monday into Vawter Parker's office, bring up that subject?

A. Well, yes, I believe it was that day. He decided on Monday, then, he was going to make up his mind whether he wanted or didn't want it, and then

(Testimony of Walter Stegmann.)

this additional area had to be set out, the lines had to be changed slightly. I don't remember exactly how they had to be changed, but they had to be changed a little [1640] to take in more ground.

Q. Did you participate in setting this out? I mean, did you help in working out that?

A. Yes.

Q. That was part of your work there?

A. That was part of my work.

Q. Who else was present on Monday?

A. Mr. Winans and Vawter Parker were the only ones there on—yes, they were the only ones.

Q. What happened to Mr. Haynes?

A. He was not there Monday.

Q. He was not there Monday?

A. Not that I remember.

Q. When this subject came up about the additional land, did Mr. Winans seem to know the additional amount required to pay for it?

A. It seems like this had been discussed, too, that they—it seemed like he had kind of an understanding how much he was going to have and how much it was going to be.

Q. Was the amount discussed with you?

A. Oh, it may have been—I don't remember them discussing—him and Vawter Parker may have been figuring on it, but I am not too sure. They arrived at a certain amount, but I know they wanted, he wanted some additional acreage, and it was approximately where I had surveyed, I had

(Testimony of Walter Stegmann.)

tentatively surveyed it out, [1641] and that was agreed on that he would take that.

Q. Was it your understanding at the time and his understanding at the time that the reason you would make that additional survey of the property to include it in the reserved area was because it met with the agreement of Mr. Chet L. Parker?

A. I am sure that they had agreed on, Mr. Chet Parker and Mr. Winans had agreed on that before because I remember Chet Parker saying that if he wanted this additional land, why, he could go ahead and take it because, as I remember, if it didn't take in any trees to amount to anything, and I had kind of surveyed it off a little there, and I knew approximately where it went, so it didn't take in much valuable timber.

Q. Did setting this description to rights take some considerable time on this day?

A. Well, seems like it took quite a bit of time because I believe it was before dinner——

Q. By dinner, do you mean lunch?

A. Or lunch, I mean, it was probably before twelve o'clock that we went there. That was Mr. Winans and myself, and it seemed like a lot of writing and rewriting on descriptions so to get it started in there and then read it over again, and it was wrong, so go back and rewrite it again, and we were working out, and it seemed like quite a problem to set out this reserve.

Q. Was there any discussion about going over to the Title and Trust Company? [1642]

(Testimony of Walter Stegmann.)

A. Well, as I think, there was some discussion on that. He wanted to—he said to go over, to either call up the title company—I think that was on Saturday that he wanted to call up the title company. That is when Mr. Haynes and I was there.

Q. Was that on Saturday?

A. I believe it was. I am not positive, but I am sure it was.

Q. It might very well be? Would you give your version of that, please?

A. Well, I told him that he could go ahead and call them up if he wanted to, but I could see no reason for calling. I understood they were an insurance company, a title company, but if he wanted to call someone, Haynes and I was there setting out this property and we were surveyors—I am not a very good surveyor but he was supposed to be a good surveyor—and how could an insurance man help in assisting us setting out the property. If he wanted to get someone that had knowledge, get the engineer to set it out, that I had no objection to him calling the man. The only thing I couldn't see, why, he was going to get—if he wanted to get someone more experienced than we were, get a good engineer.

Q. Who were you referring to?

A. I was referring to Vawter Parker calling up this title insurance man.

Q. Did you mention going to some Government office to use their equipment, something like [1643] that?

A. Well, no, I said if he wanted to call up any-

(Testimony of Walter Stegmann.)

body, why, I didn't care if he called him up, but what I suggested to call up would be the County Engineer or some engineer that understood surveying.

Q. When did you finish your work there on Monday?

A. Well, it seems like it was about closing time, I mean, as everybody was getting kind of anxious to leave. I didn't know, I don't know whether it was four o'clock or four-thirty or whether it was——

Q. Was there any discussion that you recall, in your presence, regarding the form of deeds to be drawn?

A. Well, I never paid any attention to it, and it really wouldn't—I wasn't interested in that because Mr. Parker——

Q. That is not my question. I mean, was there any discussion in your presence regarding how the deed was to be drawn?

A. Well, I don't remember any discussion on that.

Q. Were you ever—did you make any inquiry, or did they ask you any questions about whose name should go on the deed?

A. Well, yes, I guess they did when they were drawing up the deed ask whose name they should put in there, and I told them I thought, or I knew, Mr. Winans knew that Chet Parker was buying the property, but I told them I didn't know whether Mr. Parker, Chet Parker, wanted his name or his

(Testimony of Walter Stegmann.)

son's name or his—their, oh, business name, or—I didn't know whether—they hadn't told me whose name they had wanted to put in. [1644]

Q. Did you have an arrangement to meet Mrs. Chet Parker this day? A. On Monday?

Q. Yes.

A. Well, there was no exact arrangement that I knew of, only that Mr. Chet Parker told me when I had seen that reserved area was set out properly in the deed, why, Mr. Abraham was supposed to do the closing for—I mean as to pass his opinion on it and take it over to him, and that was all I had to do.

Q. Did you receive a final copy?

A. On that Monday evening, why, I received a copy of the deed. I never paid any attention what the wording in the deed was, and I did notice that the description of the property was right in that the reserved area was right, as near as I knew, and the way it had been staked out, why, the description was set down properly.

Q. Who gave you that copy?

A. Vawter Parker gave me that copy.

Q. Was Mr. Winans there at the time the copy was given to you?

A. I don't know. I believe he was, but I am not sure. He was in and out quite a bit, too, at the time and Vawter Parker was drawing up this deed.

Q. Now, any time on this day, this Monday that you have been just discussing, did Mr. Paul Winans

(Testimony of Walter Stegmann.)

mention to you, or discuss with you, the state of the title to this property? [1645]

A. I don't recall any. If there was, all I ever understood or heard, that Ethel Winans, his sister, had a deed to the property and that at one time they had title insurance—a title insurance policy, and that was all I knew.

Q. You say at one time. Now, I am talking about this day now. I am not asking as to what transpired beforehand. I am asking about the 12th day of September—10th day of September, rather, Monday.

A. Yes.

Q. Did Mr. Vawter Parker or Mr. Paul Winans discuss the state of the title to this property with you?

A. I don't remember of any discussion with me at all.

Q. Was there any discussion, though?

A. No.

Q. Did you overhear, or did there ever take place in that office on either of these two days any discussion about that deed, whether the deed should be in any form, in any legal form, or what type of deed was to be given?

A. Well, I don't remember any. If they would have been discussing, I didn't pay attention to it because Mr. Parker had told me to take the deed, when I got a copy of the deed to take it over to Abraham's office, and he was the one that was supposed to look at it, so it didn't interest me at all what kind of a deed they were writing.

(Testimony of Walter Stegmann.)

Q. I appreciate that it wouldn't have interested you. I want [1646] to know if they discussed it with you? A. No.

Q. When Mr. Parker handed you the deed, can you recall what he said to you, or did he just hand it to you?

A. I think he just handed it to me and said, "Well, here is the deed," I think, "a copy of it."

Q. Did he know at that time that Mr. Abraham was going to check the deed?

A. I don't know as he did, or as I ever told him, but I told him that I am sure they wanted—well, I was to take it over and they were going to have their attorneys look at it.

Q. You said they were going to have their attorneys look at it?

A. I may have said that, but I am not sure.

Q. I don't want you to say something you may have said. It is what you remember. If you do not remember, of course, that it another matter.

Was there any discussion about you coming back there the next day, the Tuesday following the Monday? A. No.

Q. Was it your understanding that you were not to come back? A. On Tuesday?

Q. Yes.

A. Well, after I had seen that the lines were properly described in the deed, why, that was all my job. I didn't have nothing more to do with it, so there was no reason for me to come back. [1647] I was finished.

(Testimony of Walter Stegmann.)

Q. Did you say that to Mr. Vawter Parker?

A. Well, I don't know as I did. I can't recall. It is possible that I did; it is possible that I didn't.

Q. Did you next go over to Mr. Abraham's office?

A. You mean when I got the copy of the deed?

Q. Yes.

A. Yes, I took it over to Mr. Abraham's office.

Q. Before we leave Vawter Parker's office on Monday night, there has been some testimony from Mr. Parker, I believe, that you went out of the office a number of times. He did not follow you. Were you in and out of the office for any purposes on Monday?

A. Why, I don't—I did probably while they were typing up copies, why, I may have went out for a cup of coffee, or it seems like at times I think everyone had went out a time or two for coffee. I am not sure that—Winans was in and out quite often and I think I may have been once or twice. I am not sure.

Q. Would you have had any reason to consult anybody? Mrs. Parker, say, or anybody outside that day, or did you?

A. Well, I didn't consult with anyone, and I didn't have any reason to consult with anyone because I knew the description of the property that was being reserved.

Q. You went over to Mr. Abraham's then. Was Mr. Abraham's secretary there, or did you have to

(Testimony of Walter Stegmann.)

go in and get Mr. Abraham, or how did that work out, please? [1648]

A. Well, I don't remember. It seems like his secretary was there.

Q. Did you meet Mrs. Parker——

A. When I went in the door, Mrs. Parker was there, and I was to deliver the deed to Mr. Abraham, but when I went in the door, why, Mrs. Parker was there and I think Mr. Abraham's secretary was there, and I give the deed to Mrs. Parker, and I don't know whether the door to Mr. Abraham's office was open or not. It seems like his door and the reception room kind of joined, as I remember. I am not too sure of that. I told Mrs. Parker that to my knowledge the description was in the deed correctly and as near as the reserved area had been staked out, and that was all I knew I was sure that was right, and I was done with it.

Q. Did Mr. Abraham overhear this, or was that a conversation——

A. I don't know whether he heard anyone talking or whether he opened the door or come out or whether he was in the doorway. I am not sure he——

Q. Were you in the corridor there between the counter and the doorway—are you familiar with Mr. Abraham's office?

A. I have been in there once, I believe it was, as I remember.

Well, it seems like his—we may have been right in the door. I am not sure whether he opened the

(Testimony of Walter Stegmann.)

door and was listening there or not. I am not sure.

Q. You gave the deed to Mrs. Parker?

A. Yes, I handed—— [1649]

Q. By the deed, I mean this copy you had?

A. The copy of the deed I handed to Mrs. Parker.

Q. Did she give it to Mr. Abraham?

A. I think she took it from me, and she may have—Mr. Abraham may have been there. I believe he did step out the door, or was there, or Mrs. Parker stepped in the door and handed the deed to him, or she had the deed. I am not sure, but I did—all I did was give the deed to Mrs. Parker. I said, “To my knowledge I am sure the lines of this reserved area are correct and they are right,” and that I was finished with it, that I was done.

Q. Were you introduced to Mr. Abraham?

A. I don’t remember ever being introduced to him.

Q. You do not? A. No.

Q. Did you leave then?

A. I think I left right then.

Q. Did you leave alone?

A. Well, he was, it seemed like, kind of anxious to get out. Now, I don’t remember whether he come down out right away or not, but it seems like I left alone before anyone else did.

Q. You did not return to Hood River or have anything further to do with this transaction then on the next day? A. No.

Q. Now, in your contacts with Mr. Paul Winans

(Testimony of Walter Stegmann.)

prior to obtaining the option from Mr. Winans and Ethel Winans on August 11th, [1650] did Mr. Winans ever at any time offer you the Government's exhibits, Lots 1 and 2, as separate parcels of land?

A. No, I always considered them as one piece. That was always one tract of land.

Q. During all of your discussions with Mr. Winans, was there ever any occasion when he separated the values as to two parcels of land, Government Lot 1 and Government Lot 2?

A. You mean that I knew where he separated each one?

Q. In his asking price from you for the lands, did he ever separate the two lots as to value?

A. No, he always had—the price was set on, as one piece of land.

Q. And after hearing the testimony of Mr. Winans here, it is your recollection, your testimony, that it was always a price as on one piece of land?

A. That is the way I always understood it was, as being priced as just one piece of land, one parcel.

Q. I believe that you have been questioned on this before, Mr. Stegmann, and you have also had an opportunity to hear the testimony of Myron Parker.

Did you at any time go into the office of The Title and Trust Company in Hood River and speak with Miss Vose, who testified here that she believed she saw a man that looked like you come in and ask about a policy for Chet Parker?

(Testimony of Walter Stegmann.)

A. No, I have never been in the title office in Hood River. [1651]

Q. Did you at any time, and particularly on the time testified to by Mr. Miller, accost Mr. Miller on the street in Hood River and question him as testified?

A. No, I never did. The first time I ever seen Mr. Miller that I can recall was here in this courtroom. [1652]

* * *

Q. Is this the Pea Vine property that you purchased for \$3,000? A. Yes.

Q. And you sold the rights to log it for \$3,000?

A. Yes.

Q. Now, on that occasion, would you tell us whether at that time Mr. Parker, Mr. Chet L. Parker, was one of the adjacent property owners?

A. Well, I didn't know whether he owned property, owned the land, or owned just the timber rights on it, but I did understand that he had that timber adjoining my property after I had bought the property up there. The fact is, I was kind of interested in that property myself, is one of the reasons why—the timber on it—and then I heard from some loggers or something that Parker had purchased this timber. Whether he owned the land at that time I am not sure, but Mr. Wardell—there were a few trees there standing on this adjoining property that would be east of my property at that time, and he was wondering who owned the prop-

(Testimony of Walter Stegmann.)

erty there, and I says, "Well, I don't know who owns the property, but I think Mr. Parker has purchased the timber." Well, he says, "It looks like there is some logs there," or something to that effect. He acted like he may have been a little interested in it, and that is why I—all I told him about it.

Q. Your purpose for taking Mr. Wardell up there was solely for yourself to sell your own property, your own benefit?

A. It was solely for my own benefit, was to take him up there to [1655] show him my property because I didn't know whether—nothing about this adjoining property, only that Mr. Parker had bought the timber. Whether he still was going to take some off or whether he had—I just took Mr. Wardell up there to show him what salvage property there was on my property.

Q. Did this question regarding the Parker property come up in the conversation?

A. He asked me if I knew who owned those few trees standing there. I told him, "I believe Mr. Parker owns them."

Q. Did you tell him you did not own it?

A. I told him I didn't own it. I told him that was not my property. I showed him where the fence line of my property ended.

Q. Did Mr. Chet L. Parker ever hire you or have any dealings with you or tell you with regard to showing Mr. Wardell this property?

A. Never did.

(Testimony of Walter Stegmann.)

Q. Never did? A. No.

The Court: We will adjourn until ten o'clock tomorrow.

(Evening adjournment taken.) [1656]

February 10, 1953—10:00 A.M.

WALTER STEGMANN

recalled, testified as follows:

Direct Examination

(Continued)

By Mr. Ryan:

Q. Would you hand Mr. Stegmann Exhibit 26, please?

Mr. Stegmann, you are looking at Exhibit 26, which has already been entered in evidence in this case, and yesterday I handed you what purported to be a photostatic copy of that Exhibit 26. Can you identify that exhibit, Exhibit 26?

A. Yes; this is a Notice of Election to Purchase and an acknowledgment of Notice of Extension of Time to reserve out the reserved area and stake out the——

Q. Is that the original instrument from which the photostat you were testifying yesterday was taken? A. Yes, I am sure this is.

Q. Does your testimony relating, given yesterday relating to the photostatic copy apply to the original instrument? A. Yes.

Q. Mr. Stegmann, there was testimony given

(Testimony of Walter Stegmann.)

here by a Mr. Parman which you heard regarding some property on Gale's Creek, down in the Gale's Creek area. Would you give us your recollection and [1657] understanding of that transaction?

A. Well, I had a chance to purchase some timber from a man by the name of Lessard, and I have tried to locate him but I have not been able to find him. He has moved to Washington, I think, and where I don't know. He said he would sell it to me for a certain amount of money. I don't recall the exact figure. I happened to get in contact or run into this Mr. Parman. I don't remember how we came together, but I took him up to show him this property and asked him what he thought it was worth and what he might pay for it, at Gale's Creek, Oregon.

Q. Did you have any interest in the property at that time? A. Well, how do you mean?

Q. Had you purchased any interest in the property at that time?

A. No, I hadn't purchased any, only the verbal agreement with this man that he would sell it to me for a certain figure.

Q. Do you remember what that figure was?

A. I don't remember the exact figure. It seems like it was eighty or a hundred thousand dollars, something like that. It was up in there pretty close.

Q. How was it going to be sold, by actual cash payment or by so much per thousand, or what was the——

A. Well, he wanted an offer made on it. He

(Testimony of Walter Stegmann.)

would take a down payment and then so much, the rest of it by the thousand, but he had not made any exact statement. He wanted to know what it was possible to do. [1658]

Q. Now, Mr. Parman was under the impression that this property was owned, with the exception of two forties, by the L. H. & L. Lumber Company. Do you know what Mr. Lessard's interest in this property was?

A. No, I don't, only that Mr. Lessard told me that he owned some rights in there and that timber he owned—he didn't own the lands, but he had the rights to buy the timber, and it had to be taken off in a period of a few years. I don't remember the exact amount of years, but there was a time limit on it that it had to be taken off. I understand he didn't own all the land. He owned some of the land, I think, but the rest of it he had the timber contract on.

Q. Did you know that the L. H. & L. Lumber Company owned this property?

A. No, I did not.

Q. Did you know at the time that Mr. Chet L. Parker owned some of the property?

A. No, I did not.

Q. What was the extent of your showing of this property to Mr. Parman?

A. You mean how long I took to show him?

Q. Yes. I mean what did you do to show it to him?

(Testimony of Walter Stegmann.)

A. Well, I don't exactly remember all the time that was spent up there. I took him up and showed him approximately where the property was, and I showed him a map. I think I had a map at [1659] that time that Mr. Lessard had given me of the descriptions and I give them to Mr. Parman and he was going to have his cruiser or somebody else's cruisers make a further check on it for him.

Q. Did you see him again about that deal?

A. No, I didn't see him again. It seems like quite a bit later he called me up and he wondered if it was still, if he was still able to purchase it, and during that time Mr. Lessard told me he had sold it to somebody else. He didn't wait. He got tired of waiting for me and he sold it.

Q. Did Mr. Chet L. Parker ever communicate with you regarding this property? A. No.

Q. During the course of your negotiations to purchase the option from Winans for this property, and during the period subsequent to that and in which you sold the option to Mr. Chet L. Parker and did surveying on that property and worked to set out the reserved area, a period which ended, according to your testimony, on Monday evening, September 10th, did you at any time have knowledge of the fact that Chet L. Parker had purchased or was negotiating to purchase a policy of title insurance from the plaintiff, Title and Trust Company?

A. No, I did not.

Mr. Ryan: Your Honor, it is my understanding that both the plaintiff, Title and Trust Company,

(Testimony of Walter Stegmann.)

and defendants Winans are willing to stipulate that in the event that the Court finds that [1660] defendant Stegmann is entitled to attorneys' fees from either of those parties, that the Court may assess said attorneys' fees.

The Court: Very well.

Mr. Ryan: Without the necessity of any evidence; is that correct, gentlemen?

Mr. Krause: We agree to that.

Mr. Buell: We understand that you propose to advise the Court just generally what the services have been.

Mr. Ryan: Yes.

Mr. Buell: Without necessity of taking the witness stand or anything like that.

Mr. Ryan: I, personally.

Mr. Buell: That is what we understand.

The Court: Yes, that is what your agreement was made yesterday in connection with Mr. Jaureguy's offer, that if I found in favor—that the Parkers are entitled to attorneys' fees, we will call Mr. Jaureguy up here and he will generally outline the services that he performed. The same applies to you.

Mr. Buell: That is correct.

Mr. Ryan: I have no further questions.

The Court: Mr. Jaureguy?

(Testimony of Walter Stegmann.)

Cross-Examination

By Mr. Jaureguy:

Q. On this Gale's Creek property that you showed that man who [1661] was a witness, Parman, or whatever his name is, do you know whether Chet Parker owned any of that property?

A. Well, I am sure that Mr. Lessard said he owned what property was owned there, and that I never did hear Mr. Parker's name mentioned that any property was owned there.

Q. Do you know whether he owned any of it?

A. No. [1662]

* * *

Cross-Examination

By Mr. Krause:

Q. Mr. Stegmann, do you recall the time when you were in Vawter Parker's office on the Saturday when you were getting the description out and getting the deed written up? Did you say that you took a copy of the deed away with you that night?

A. I don't think I took a copy of the deed away. I think it was just a kind of a rough copy of the reserved area that was set out. [1666]

Q. Do you remember what provision had been put in there regarding the width of a right-of-way to get to the reserved area?

A. Well, I don't know whether they arrived—on that day whether they had arrived at a—had

(Testimony of Walter Stegmann.)

got that far to even talk about their right-of-way out through there.

Q. Well, how much of a right-of-way was finally provided? How wide a right-of-way was finally provided to get the—to get to the reserved area?

A. I don't remember now unless I had something to refer to.

Q. Do you recall whether it was 25 feet; that is, 12½ feet on each side of the line?

A. Well, I don't remember the exact figures.

Q. Do you recall that you earlier had been talking about a 40-foot right-of-way and that on Saturday the deed that you had, provided for a 40-foot right-of-way?

A. Well, I don't remember whether they—it may have been discussed, but I am not sure whether it was even talked about on Saturday.

Q. Didn't you, after taking that copy of the deed away with you providing for the 40-foot right-of-way, when you returned on the following Monday you objected to that width of the right-of-way, had it cut down to 25 feet; do you recall that?

A. I don't remember that. If there was any discussion on the 40-foot right-of-way I think it was probably—I discussed it all along. It had been too wide. [1667]

Q. How many times did you meet Ethel Winans, Mr. Stegmann? That is the sister of Paul Winans.

A. Well, I am not exactly sure. Probably two or three times, probably.

Q. What were the first times?

(Testimony of Walter Stegmann.)

A. The first time, I believe, was when she signed the option.

Q. That was on August 11th?

A. Well, that was on a Saturday. I guess that was August 11th.

Q. Saturday, August 11th? A. Yes.

Q. Where did you go to see her that morning?

A. She was in her house, I believe it is, or a big house that is back of the office there where Mr. Winans had his little office.

Q. That was her home where you went to see her?

A. Oh, I don't know. She was there. I guess it was her home.

Q. And you and Paul Winans went there, did you?

A. Well, yes, he took—I went with him.

Q. Was there any discussion as to the sale of the property between the three of you?

A. All I can remember is that I was introduced to her and that Paul Winans said that I was the man that had purchased the option or he had sold the option to, and that she had to sign it. We were not there very long.

Q. Didn't you and Paul Winans call on her there before any part [1668] of the option had been written?

A. I don't believe so. I am not sure, though.

Q. There was a discussion there at that time regarding the pieces of property, the forty acres, and

(Testimony of Walter Stegmann.)

the property adjoining the land? You don't recall it?

A. I don't recall that discussion.

Q. Was there a discussion there between the three of you as to the amounts that you were paying for the two different tracts?

A. All I know is that when I purchased the option is that I was to pay so much for the whole property. It was always considered as one property that I know of, you see, one piece of land.

Q. Well, finally there was a hundred thousand dollar price fixed for the two pieces; that is correct, isn't it? The option provides for one price for the two pieces?

A. Yes.

Q. But what I am asking you about is whether you discussed prices applicable to the two different pieces before the option was signed, between Paul and you and Ethel?

A. I can't recall any discussion at all.

Q. You don't recall a discussion that you had agreed to pay \$80,000 for the waterfront property and \$20,000 for whatever interest the Winans had in the forty acres?

A. All I ever considered was that it was a hundred thousand dollars for the—all the property they had there except the [1669] reserved area.

Q. Mr. Stegmann, we might agree that that is all you ever considered, but my question was whether there wasn't a discussion between the three of you in which \$80,000 was put on the one property and \$20,000 on the other?

Mr. Jaureguy: I think perhaps I should have

(Testimony of Walter Stegmann.)

said before, we had an agreement with respect to questioning of this witness by others, but I want to object to all the conversations of this witness insofar as they may be offered against Parkers on the grounds not binding on this witness and purely hearsay, and I wonder if I may have that without the necessity of rising and interrupting——

The Court: I thought you had it all the time.

Mr. Jaureguy: I was under the impression I had, but then I got to thinking it might not just cover it.

The Court: Mr. Stegmann, the thing that Mr. Krause is asking you is to answer his questions. If he asks you about a conversation, tell him that you either had the conversation or that you didn't or that you don't remember, but don't tell us something else.

Read the question, please.

(Last question read.)

The Witness: Well, there never had been a discussion on that.

Q. (By Mr. Krause): Now, Mr. Stegmann, I am not quite clear now [1670] as to whether or not you admit that that was your signature on the yellow copy of the Election to Purchase or not. Do you want to see it again?

A. I have seen it, and I cannot recall ever signing that, but it looks so much like my signature I wouldn't say that it wasn't.

(Testimony of Walter Stegmann.)

Q. That is as far that you will go is that you won't say it is not your signature?

A. I am not sure that it was or wasn't. I do not recall signing it.

Q. Had you noticed that you did not sign any of the ribbon copies of either one of the two papers that you signed there, either the option or the Election to Purchase, that you left your signature off of both of those papers; whereas you did sign the copies that Mr. Winans retained?

A. What was that again? I don't understand your question.

Mr. Krause: Could I have those two? Three hundred seven and twenty-six are the two.

The Court: I believe the witness does not understand "ribbon copy." If you tell him that was the original, he will understand what you are talking about.

Q. (By Mr. Krause): There were two copies signed, Mr. Stegmann. One was a white copy, and one was a yellow copy. Might I approach the witness, your Honor?

Mr. Jaureguy: That is 26.

Mr. Krause: This is 26 and 307. Now, I hand you 26. That [1671] is what you call the ribbon copy. You might call it the original.

A. Well, yes, I would say.

Q. Here is a carbon copy that has all of the signatures on it. You notice that in the—on 26 you did not sign up here in the place provided for in the Election to Purchase. Now, on the original option

(Testimony of Walter Stegmann.)

there is a photostat, Exhibit 327, of the original option. There is a line down here for Approved. That is a photostatic of the ribbon copy or the original. Here is Mr. Winans' copy, Exhibit 305, which you also signed; did you not? A. Yes.

Q. And you did not sign your own copy?

A. Well, I didn't think it was necessary to sign the copy of that.

Q. You did not think it was necessary to sign Exhibit 26?

A. Well, I signed down here (indicating).

Q. Yes, you signed on the Extension of Time?

A. Yes. [1672]

* * *

Cross-Examination

By Mr. Strayer:

Q. Mr. Stegmann, can you fix the approximate time when you were first in the Parkdale Ranger Station? A. No, I can't.

Q. Was it in 1951?

A. Yes, I am sure it was in '51.

Q. Was it before this Winans transaction had come up?

A. Well, it was—it could have been possibly before.

Q. Well, you mentioned that you had a Mr. Marsh with you. Is that the Mr. Marsh from whom you were trying to purchase some timber?

A. No, that was some relation to him.

Q. What was his full name; do you remember?

(Testimony of Walter Stegmann.)

A. That was with me? [1674]

Q. Yes. A. Floyd Marsh.

Q. You have no way of telling whether that was before or after the Winans transaction?

A. I can't—it was probably in about the same time. I am not sure because I was up in that area right, or in about that same time buying timber in there.

Q. Well, what is Mr. Floyd Marsh's business?

A. Well, they, ranching is their business, his business.

Q. He raises cattle? A. Yes.

Q. Do you remember talking with Mr. Petersen in the Ranger Station when you were there with Mr. Marsh?

A. I don't recall his name, but I talked with somebody there.

Q. You saw Mr. Petersen when he testified the other day?

A. Well, yes, I seen him, but I couldn't remember him exactly, being dressed different in ranger clothes.

Q. You didn't recall him as the man with whom you talked on that occasion?

A. No, I am not sure.

Q. Well, did you talk with Mr. Petersen about finding some grazing land at that time?

A. About finding some?

Q. Yes.

A. Well, I had already found it. [1675]

Q. What was that?

(Testimony of Walter Stegmann.)

A. I had already found it.

Q. What was the purpose of you and Mr. Marsh going to the Parkdale Station?

A. This piece of property up there had a lot of grazing land on it, and it had some timber on it, and I——

Q. Pardon me, which property are you talking about now?

A. This was a piece of property, would be north-east of Hood River. I believe it was kind of towards Mosier, and I don't remember the man's name that did own it, but he was about to lose the property, and Marsh wanted, Floyd Marsh wanted it for grazing land, and him and I were going to purchase it together if I could buy the timber on the property. It had some timber on it. Then I understood that the county owned the timber, and looking into it further—or the Forest Service, so that was the reason for us going to the Ranger Station and asking whether it would be possible to purchase that timber on the property.

Q. Is Floyd Marsh a resident there at The Dalles or around The Dalles?

A. Well, yes, I believe he is around Mosier and The Dalles part of the time.

Q. He is pretty well known up in that country, is he?

A. There is quite a few Marshes up in there. He seemed to be well known up in there.

Q. Is it your testimony, you say, that on August

(Testimony of Walter Stegmann.)

13th, the day [1676] that you took Mr. Parker to the property, you did not go to the Parkdale Station? A. Yes.

Q. And you did not talk with either Mr. Petersen or Mr. Parrott?

A. I don't recall. I don't recall going there. I am sure I was not there.

Q. Now, on August 14th, that was the day that you went up with Mr. Kenny, I believe, to the Lost Lake property?

A. I don't remember whether it was the 14th or the 15th. I am not sure, I mean, whether it was that Tuesday or Wednesday, whichever day it was.

Q. Whatever day it was, either the 14th or 15th, Mr. Parker had asked you to go up there and show the property to Mr. Kenny, as I understand it. Now, I wish you would tell us just what you and Mr. Kenny did when you went up there.

A. Well, I took Mr. Kenny up there and I showed him where the tag was. Along the trail there is a Government tag, a board on a tree, as I remember it.

Q. What does the tag show?

A. Well, it show, I think it is the township and range and section.

Q. Is that a corner marker, you mean, a tag showing where the corner is?

A. It shows, it tells the approximate distance to the corner, and then the line is placed from there going, would be going west. [1677]

Q. Would that be toward the lake?

(Testimony of Walter Stegmann.)

A. What?

Q. Would that be toward the lake?

A. No, it would be going away from the lake.

Q. Away from the lake?

A. And it runs, the place runs right up and past—there is another quarter section corner there, a Government corner, and it has an iron pipe with a brass cap on it, and we started approximately—I showed him where that was, see? He was familiar with the property. I mean, there was one corner of the property.

Q. You mean you took him over to this brass-capped quarter corner marker?

A. Yes, and I told him where I had went, approximately. I had my pocket compass with me, which I usually do when I am in the timber, and I probably used the compass to point out the directions and showed him approximately where I went, and we may have walked out through there a little. I don't remember.

Q. Wait just a minute. What do you mean you showed him where you went? Where you went where?

A. Well, when I looked at this property before I purchased an option on it, I had walked around through this timber up there to get an idea of whether there was, how much was on the property, and I had showed him approximately where I had went and I suppose we discussed the type of timber, then, like you ordinarily do when [1678] you are out there.

(Testimony of Walter Stegmann.)

Q. Well, now, then, what did you do?

A. I just showed him approximately where I went, and I used the compass probably in the direction because I usually do because it is confusing in the timber if you do not have something to direct you with, and we may have walked around, but I don't remember just how much time I spent up there with him.

Q. Well, did you show him where the line was between the Lot 1 and the back forty?

Q. No, I did not. I just showed him where the quarter corner was, and I don't know whether he had a Metsker map with him, and he could determine that if he wanted to. I am not sure.

Q. Did you help him on his cruising?

A. Well, I showed him approximately where I went. Now, whether that was the extent of his cruising or whether he made further cruising, I don't know, and I believe that I took him down on the trail and pointed out the approximate area that I was supposed to survey off for Mr. Parker and for this reserved area so that he would not include that in his——

Q. May I have Exhibit 116, please?

The Court: We will take a recess.

(Recess taken.)

WALTER STEGMANN

recalled, testified as follows:

By Mr. Strayer:

Q. Mr. Stegmann, I will hand you Exhibit 116, which is Mr. Kenny's map concerning his cruise of the Lost Lake [1679] area. Maybe that will help us to talk about what you did on that day. That area that is marked "Reserved Area" on the exhibit, is that approximately where—approximately the area that you pointed out to Mr. Kenny?

A. I think it is, probably. I pointed out approximately what Paul Winans said that he wanted to reserve at the time that I got his option. They wanted to reserve and he told me approximately where they were going to take it, and that is the reserved area I think I pointed out.

Q. In pointing that out to him, did you walk down in that area or did you point that out from some other place?

A. Well, I believe it is possible that we walked, Mr. Kenny and I walked down this trail.

Q. Well, the trail you are referring to is marked with a dotted line on this exhibit with the word "Trail" on it; is that right? A. Yes.

Q. It follows the general meander line of the lake? A. It follows it generally.

Q. You think you walked down that trail and pointed out that general area to Mr. Kenny?

A. Yes, that is what I think. That is, I don't remember clearly, but I mean, that seems to be what I did.

(Testimony of Walter Stegmann.)

Q. The corner that you say you pointed out to Mr. Kenny, is that the quarter corner there that divides Lot 1 from the back forty on the north line? [1680]

A. Yes, that is the corner there of the line between the two lots.

Q. That is the one that you pointed out to him where the brass cap was? A. Yes.

Q. Did you also point out that meander corner?

A. Yes, we stopped, as I remember, and looked at this tag, and it showed where that meander corner was, and I think we probably walked down through to the lake edge and looked at it. I am not sure.

Q. Well, then, I assume that you walked from the meander corner or from the trail near the meander corner along the north line over to the quarter corner? A. Yes.

Q. And pointed out the quarter corner to him?

A. I showed him, I know I showed him the quarter corner, too, because that was—the other one that is in the lake is a meander corner or approximate corner. I mean, it is not so definite as the other one set up here.

Q. Did you point out any other corners to him while you were there?

A. I don't recall pointing out any other corners to him.

Q. Did you point out any lines to him?

A. I don't believe I did.

Q. Did you take any measurements while you were there with Mr. [1681] Kenny, or did he take

(Testimony of Walter Stegmann.)

any measurements? A. How do you mean?

Q. Did you do any chaining at all?

A. No, no chaining.

Q. Did you do any measurement by pacing or by any other method?

A. Well, I think he may have paced a ways along there.

Q. While you were there, I mean?

A. While I was, yes.

Q. Yes?

A. He may have paced it, I don't know.

Q. You don't remember, then, any measurements of any distance? A. No.

Q. All right. Now, where was it that you used your compass?

A. Well, I think I probably may have used it down at this—from the trail giving the general direction, using it as a pointer giving the general direction of west.

Q. That would be the westerly direction here, wouldn't it? A. Yes.

Q. That was in order to establish a north line of the property? A. Yes.

Q. And probably you used your compass in finding the quarter corner for him?

A. I would think so, because quite often I do when I show people property; why, if I have my compass along I say, "Well, the compass points north, or east, whichever direction we are going," so [1682] this gives them direction they are going.

(Testimony of Walter Stegmann.)

Q. All right. Now, did Mr. Kenny have a compass, too?

A. I think he had a compass, too.

Q. Did you help him on any of his actual cruising?

A. I don't know whether he made this complete cruise at that time or not, but I walked up there a little ways with him and showed him approximately where I had went and some of the distances. I mean, I just walked a little ways up in here.

Q. Did he make any of his rounds or any of his tree counts while you were with him?

A. He was looking at the timber when he was going along, but whether he made a mental count of it or jotted it down after that, I don't know.

Q. Did you see him making any notes?

A. I never noticed him making any notes.

Q. Did you see him counting his paces, or anything like that?

A. That would be hard to tell, whether he was counting, as he was walking, or not.

Q. Would it be a correct statement, then, Mr. Stegmann, that, so far as you know, you did not help Mr. Kenny on the actual cruise of the timber?

A. Well, the only help, if you could consider it help, is where I showed him approximately where I went with the compass and used the compass pointing in a direction. If that is considered helping him, why, I did. [1683]

Q. Did you see him scale any of the trees, measure the diameter of them?

(Testimony of Walter Stegmann.)

A. Oh, I think when we first got on to the property there, that he went up to a tree or two and measured them.

Q. You only saw him do that on a tree or two?

A. Probably, I wasn't—he did on a tree or two, I am sure, and looking at them and just making a guess. We probably, even both of us made guesses on several trees to see how close it was. I don't know.

Q. How long were you there on the property with Mr. Kenny? A. I just can't remember.

Q. Well, was it a matter of several hours?

A. Well, I would say, probably, walking up in there and showing him the reserved area, probably several hours.

Q. Was he still working there when you left?

A. Well, now, I just don't remember. It seemed like he was, but I am not positive of it.

Q. On August 18th did you say, Mr. Stegmann, that when you came down from the property, down to Mr. Winans' service station, did you say that Mr. Winans was hunting for his title insurance policy? A. On the 18th, the evening?

Q. Yes.

A. Yes, I am sure that he was looking for his title policy there, but it was at that time, I thought it was the time he was [1684] going to show it to Mr. Parker.

Q. Then this, I take it, was after Mr. Parker had arrived? A. Yes.

Q. What did he say he wanted the title policy

(Testimony of Walter Stegmann.)

for? Why did he want to show it to Mr. Parker?

A. I don't know. I told him that I had sold my option, or he knew then that Mr. Parker had purchased the option, and whether they were discussing—what they were actually discussing, I don't know, but when he said, when he wrote up the Election to Purchase, that maybe he wanted to find the policy or just to inform Parker that he had a policy, I don't remember exactly why he looked for it.

Q. Did he actually look for it while you were there?

A. He was searching through his papers. He had quite a stack of papers there.

Q. On the 18th?

A. Yes, his desk was always full of papers.

Q. Didn't you say yesterday that he was hunting for the title policy to prove to Mr. Parker that he had a title insurance policy?

A. I don't know whether it was to prove it or not, but I think he was just going to show Mr. Parker that he had a title policy.

Q. What did he say?

A. I can't recall the exact words. I mean, as I remember, it seems like he said, "Well, I have a title policy here I have not been able to find, but I have tried to find it, and I would like [1685] to show it to you.

Q. How long did he hunt for it?

A. Well, I don't believe he hunted very long, a few minutes.

(Testimony of Walter Stegmann.)

Q. Did Mr. Parker say, "Oh, never mind. I have already got a title report on it"?

A. I didn't hear him mention it.

Q. You didn't hear him mention that he had one in his pocket right then?

A. I didn't hear him say anything like it.

Q. When you were in Vawter Parkers office on September 8th, did Vawter Parker tell you that the \$95,000 final payment would have to be by a cashier's check or a certified check?

A. I don't remember exactly. I may have asked him because I believe Parker might have mentioned it, to ask him whether a personal check from Mr. Parker would be all right, or whether it should be certified. I may have questioned him on that matter, and he may have told me that he wanted a certified check from Mr. Parker.

Q. In which case you may have passed that information on to Mr. Parker on Saturday, the 8th?

A. I may have told Mrs. Parker, I don't remember, on Sunday, but I don't remember. [1686]

* * *

Redirect Examination

By Mr. Ryan:

Q. Did you leave Mr. Kenny on the Lost Lake property on the day that you showed him that quarter corner up there?

A. Well, I am not sure. It seems like I did, that he was still up there when I left. I am not positive, though.

(Testimony of Walter Stegmann.)

Q. At the time when you were with Mr. Winans on August 18th, and the Election to Purchase was typed out, had you given Mr. Winans to understand definitely at that time that the property was being purchased by Mr. Parker?

Q. Your testimony is that you are not certain whether you signed the yellow copy of the Election to Purchase itself, although you [1690] signed the approval of the Extension of Time. If you did sign that, at that time, was it with that understanding to Mr. Winans that you were acting for Mr. Parker with respect to the Extension of Time?

A. Yes, I told him that I was acting there, that the area had not been staked off, so I could agree on the Extension of Time. [1691]

* * *

THIRD-PARTY DEFENDANT'S CASE

ETHEL WINANS

third-party defendant, called in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Your name is Ethel Winans?

A. That is right.

Q. Where do you live, Miss Winans?

A. At Hood River.

Q. How long have you lived up there?

A. All my life.

Q. Will you tell us about how long that is?

A. Well, better than 50 years, between 50 and 60 years.

Q. How many years?

The Court: Better than 50 years.

Q. (By Mr. Krause): You have lived there continuously, have you not? A. That is right.

Q. Made your home there?

A. That is right.

Q. I suppose you were up at Lost Lake many years ago on occasions?

A. Many years ago. That was always one thing we always looked [1693] forward to, was going to Lost Lake, our family.

Q. Do you recall the first occasion when you met Walter Stegmann?

A. It was on the day that my brother, Paul, wrote up the option on August 11th.

(Testimony of Ethel Winans.)

Q. Do you have your own home separate from that of your brother, Paul? A. Yes, I do.

Q. Just to get the general location, it is across the road from where Paul lives?

Q. Then there is a little service station on your side of the road? A. That is right.

Q. That has been referred to as Paul's office.

A. Yes, he did have an office there.

Q. About what time of the day did you meet Mr. Stegmann on this August 11th?

A. Oh, between ten and eleven o'clock.

Q. Ten and eleven? A. Yes.

Q. Where was it, and who was there?

A. Well, I had previously told Paul that—he was

A. That is right.

expecting Mr. Stegmann—I told him that when he got his deal shaped up that I would like to meet Mr. Stegmann. I had heard considerably about him. He had been calling on Paul, but I had not met [1694] him, and I asked Paul before the deal was closed, I would like to meet him, and Paul brought Mr. Stegmann over to the house and introduced him, and we all three sat there and talked about the Lost Lake property.

Q. Now, prior to that day, I suppose Paul had been discussing with you the fact that he was negotiating a sale? A. He had.

Q. Had you also been familiar with the negotiations through Mr. Linville and with Mr. Montchalen?

A. I knew that Paul had also had that——

(Testimony of Ethel Winans.)

Q. Knew about their going on?

A. That's right; that is right.

Q. Did you participate in any of them yourself?

A. No, I didn't.

Q. While Paul and Mr. Stegmann were in your home, there, on this August 11th, was anything said what the deal was? A. Yes.

Q. Between Paul and Stegmann? A. Yes.

Mr. Jaureguy: My objection, of course, goes to this.

Q. (By Mr. Krause): What was said, and who said it?

A. Why, Paul made the remark, he says, "Mr. Stegmann is willing to pay eighty thousand for the 25 acres bordering on the lake, and twenty thousand for what we have in the back forty, our [1695] interest."

Q. How long did this conversation take place, how long were they there in your home?

A. Oh, not about—I think between 15 and 20 minutes, sat there and talked.

Q. Were there any other discussions about title or anything like that while you were there?

A. Not about the title, anything in particular, no.

Q. Then was that before you signed an option, Miss Winans? A. That was.

Q. Where did they go from your house?

A. They went back to the service station, to Paul's office.

Q. To the office? A. That is right.

(Testimony of Ethel Winans.)

Q. How soon after that was it that the option was brought to you to sign?

A. Oh, I imagine it was a little after noon, because I think Paul had taken Mr. Stegmann to lunch with him down at his house, down at the family home, his family.

Q. So, it was after lunch that the option was signed? A. That is right.

Q. Did you go up to the lake with them that day, too, Miss Winans?

A. No, I didn't. Paul's family went and my brother, Ross.

Q. Did you ever have any dealings with Mr. Parker at all, Miss Winans?

A. Mr. Chet Parker? [1696]

Q. Yes, Chet Parker. A. Not in any way.

Q. You were never introduced to him or met him, were you? A. Not up until later on.

Q. Were you introduced to Mr. Parker at any time?

A. I was, on—when—the morning of August 27th, at Paul's office. I went over there on some other business, and Paul and Mr. Walter Stegmann and another man were sitting there at the table looking over maps, and I just said to Paul, well, I brought some people over there that I was showing around that were considering renting the service station and some cabins, and I just said to Paul, "I brought these people over to show them around." That is all that was said at the time.

Q. Did somebody introduce you to Mr. Parker?

A. Not at that time.

(Testimony of Ethel Winans.)

Q. They did not?

A. Not at that time, no, I was not introduced. It was later, about a week later when I was over there again, Paul and I were there in the morning, and Mr. Chet Parker drove up with another man. He came in and Paul introduced me to Mr. Chet Parker and this man, Mr. Wardell, with him.

Q. You were introduced to Wardell, to?

A. At the same time.

Q. You were in Vawter Parker's office at some time to sign a deed conveying this property? [1697]

A. Yes.

Q. According to the date on that deed, that was the 10th of September? A. Yes.

Q. It has been said here that it was Monday, the 10th of September.

A. I think that is right.

Q. Do you know about what time of the day you went down to Mr. Parker's office?

A. Oh, I think I went down, I was waiting there in town all day for them to give me the word that they were ready, and Paul came up to the house—we have a house there in town—and Paul came up to the house and told me they were now ready. I went back there with him. That was about mid-afternoon.

Q. Mid-afternoon. Who was there when you got to Mr. Vawter Parker's office?

A. The office girl was there, the secretary, Mr. Stegmann was sitting there waiting in the waiting room.

(Testimony of Ethel Winans.)

Q. Was there any conversation at all at that time between Mr. Stegmann and yourself or Stegmann and Mr. Vawter Parker or Paul while you were there?

A. Well, we had to wait quite a little while. The deed was not quite completed. They had a little re-writing to do, I think it was, and there was just a general conversation came up there about one thing and another. I don't know, Paul said [1698] something to Mr. Stegmann that he had heard that they was going to cut some timber on the property, and Mr. Stegmann says, "Oh, no," he says, "I know nothing about logging."

Q. Was there any discussion regarding title while you were there?

A. There was after that was—in Mr. Vawter Parker's private office Paul made the remark that he thought it would still be better for us to attempt to get this title straightened out than it would be for new people.

Q. For who to do it? A. For new buyers.

Q. For new people, oh, yes. Did Mr. Stegmann say anything to that? A. No, he didn't.

The Court: Was he there?

The Witness: He was there, present.

Mr. Krause: You may cross-examine.

(Testimony of Ethel Winans.)

Cross-Examination

By Mr. Ryan:

Q. What was said about the title?

A. What was said about the title? Nothing specially said in my presence, other than just my brother, Paul Winans, made the remark that it would be easier for the previous owners to try to get this title straightened out.

Q. Did he say what was the matter with it? [1699]

A. No, because he had discussed with Mr. Stegmann, as I understood all the time, all the way through, and how, what the existing difficulty——

Q. No, I am asking you, was anything said at this time what was the matter with it?

A. No; no.

Q. You say you understood that he had discussed it previously with Mr. Stegmann? A. Yes.

Q. Had you heard him?

A. I had asked Paul.

Q. Did you hear Paul talk with Mr. Stegmann?

A. Not with Mr. Stegmann, no. I was not present.

Q. When Mr. Chet Parker came up there with Mr. Wardell, Mr. Stegmann was not with him?

A. No.

Q. That is the time you were introduced to Mr. Chet Parker, as Chet Parker?

A. That is right.

Q. Did the introduction consist of anything more than, "This is Chet Parker"?

(Testimony of Ethel Winans.)

A. No, that was all there was to it. He came in with Mr. Wardell. They drove up. My brother and I, Paul was there at the station. Paul was working, I think, on some maps or papers of some kind on the table, and they drove up, and Mr. Parker brought Mr. Wardell [1700] in and Paul introduced the two of them to me.

Q. Did you stay there, or did you go on?

A. I looked on for a while. It happened that I was preparing to get things ready to turn the place over to these other people. I was sorting out things I was taking over to the house. I was there for a while, and then the things I had ready, I started to take some of the things and went over to the house. Mr. Parker left shortly. I know he went out because I saw him over about, near the house there by the garage, talking with another brother there, who was working on a truck.

Q. This claim of the United States Government to what we have been calling here Lot Number 2, did you people feel, did you feel that since you were the owner of the property, did you feel that that claim could be overcome and that the property could be put into your hands without any too great difficulty?

A. We did have certain forms that we had always counted on that we could go through with. My brother had done, I think, more or less negotiating with, I don't know, I think this Senator Cordon or somebody. He had had some correspondence with him. He had intended to take it up to get an Act of Congress or something of that kind through, and we

(Testimony of Ethel Winans.)

felt that he had an interest there that we had held all these times since our father had bought it; that it was something that could be cleared up and we would have title.

Q. Are you familiar with Mr. Vawter Parker? Had you ever been [1701] in his office before this occasion?

A. No, I don't believe I had ever been to his office, if I remember right.

Q. Are you certain that the stenographer or secretary was in his waiting room when you came in there? A. Yes, I am quite certain.

Q. Did you know this girl before?

A. No, I didn't.

Q. Do you know who she is now?

A. No, I do not. I didn't know her by name.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. Miss Winans, I am interested in this conversation that you told about between Paul and Walter Stegmann, and where you say Paul said that he understood this property was going to be logged.

A. He said, made the statement, that he had heard that Mr. Stegmann was going to cut some timber on it, which we didn't have any previous understanding there was to be any timber whatsoever cut on that place. He was buying it for resort purposes only.

(Testimony of Ethel Winans.)

Q. Did Paul ever tell you where he got this information it was going to be logged?

A. No, I don't believe he did.

Q. Do you think it could have been because of the fact there had been a cruiser up there, cruising it? [1702]

A. No, it was just something, some remark he had heard about town, I think, so far as I know.

Q. Just some remark he heard about town?

A. So far as I know.

Q. You have told us all you know about that?

A. Yes.

Q. I say, you have told us all you know about his information?

A. That is right.

Q. Did you, yourself, have any information about its going to be logged?

A. No, I didn't.

Q. Was this the first time you had, yourself, heard it was going to be logged, was you heard your brother say that?

A. That is right.

Q. He had not told you about it before?

A. No, he had not. I think probably he just picked it up that day probably while he was in town, so far as I know.

Q. You will recall that in 1944, you made a settlement with the Pacific Abstract & Title Company?

A. That is right.

Q. On this forty acres?

A. Yes.

Q. Did you ever have any communications with anybody representing either the Pacific Abstract &

(Testimony of Ethel Winans.)

Title Company, with the Portland company or the Hood River company, other than in writing? [1703]

A. No.

Q. You never talked to any of them?

A. No.

Q. That deed that was given to you, I think the record in the deed shows it was dated December 29, 1943, and recorded December 30th. Had that been given to you as a result of any negotiations, or was that a rather sudden idea?

A. Not exactly sudden. After my father's illness, it had been discussed that he was very ill, that there should be something done to take care and protect the property.

Q. Is it correct to say that there was no connection whatever between your giving that deed and the application for title insurance? A. No.

Q. I was wondering how it happened that the deed was given the day before you got your title policy?

A. Well, I imagine, just a coincidence.

Q. Just a coincidence?

A. Just the time it was settled.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Buell:

Q. Miss Winans, as I take it, it was your brother, Paul, that handled most of the details pertaining to this Lost Lake property, not only since the time you got the deed to it, but also [1704] during the last few

(Testimony of Ethel Winans.)

years while your father still had title to it, while he was sick?

A. Well, more or less, he and father, of course, consulted previous to that time.

Q. Insofar as the transaction here which resulted in the final deed which was delivered to Mr. Abraham, Paul had acted with the approval of yourself and the other members of the family, hadn't he?

A. That is right.

Q. And he had kept you advised as to what was going on during the time of the negotiations?

A. He did.

Q. You say he had? A. He did.

Q. So you and your brothers and sisters have no fault to find with Paul in connection with what he did in reference to this sale? A. Not at all.

Q. Now, going back a moment to the occasion when you first saw Mr. Parker, which I believe you placed the date as August 27th, is that right?

A. That is right.

Q. Did you say that you had some persons who were interested in leasing or buying your service station?

A. In leasing, renting, leasing the service station. [1705]

Q. And you had brought them out to the service station at that time?

A. I had. They arrived that morning and my brother was still there taking care of the service station. I hesitated a moment about going over, but these people were anxious, wanted to get on their

(Testimony of Ethel Winans.)

way about something else, so I took them on through. As I stated, I said to Paul, "I brought these folks over," and he just acknowledged, and Mr. Stegmann, of course, I had previously met him.

Q. You recognized Mr. Stegmann?

A. I did, and he spoke. Well, the man sitting next to him, he did not because I had never recognized him before.

Q. Was Mr. Stegmann there on the 27th?

A. Yes.

Q. I believe you testified before, did you not, that there was another man that you didn't recognize in addition to Mr. Parker being there?

A. No; no.

Q. Oh, just Mr. Stegmann and Mr. Parker?

A. Yes, sir, the two besides my brother.

Q. And you were not introduced to Mr. Parker, and he was not introduced to you when you first came there?

A. Not at that time.

Q. Then about how long was it until the second occasion?

A. Oh, about a week, I believe. I think it was just after Labor [1706] Day.

Q. Did that also take place in the service station?

A. That is right.

Q. There was just this Mr. Wardell and Mr. Parker?

A. Yes.

Q. And your brother, Paul, introduced the both of those men by name at that occasion?

A. Yes.

Q. Did you recognize Mr. Parker as having

(Testimony of Ethel Winans.)

been the man you had seen in the service station on August 27th?

A. Yes, I did; that is right.

Q. At the time of that introduction, what was said as to the reason why Mr. Parker and Mr. Wardell were there?

A. Well, I think Mr. Parker told my brother why he had brought him there, that he was the man that——

Q. Well, now, just a moment so we won't have any misunderstanding. I was asking you as to what was said as to why Mr. Parker and Wardell were there, to you. In other words, what was said that you heard?

A. To me, nothing to me.

Q. Nothing was said?

A. No, not while they were there. They just went ahead talking between themselves, my brother, Mr. Parker and Mr. Wardell, and I went about my work, but I was still in the room, there.

Q. So, while Mr. Parker and Mr. Wardell were there, you did not [1707] overhear any conversation about a housing project or anything else?

A. They were, started talking about what business, but I did not pay close attention, not enough to relate it.

Q. I also was not quite clear as to how long it was that you saw Mr. Stegmann on the first occasion that he was introduced to you? I believe you identified that as being the day that the option was signed?

A. That is right.

(Testimony of Ethel Winans.)

Q. About how long a time did you see him that day, altogether?

A. How long a time? Oh, there at the house about fifteen or twenty minutes. Then they went back to the service station or Paul's office.

Q. During the fifteen or twenty minutes that you saw him, did he say anything about what he proposed to use the property for?

A. Well, I asked him——

Q. That you heard?

A. I asked him if he intended to—he indicated that he was buying it for a resort or something like that, or building a home. I asked him if he intended to develop it himself, and he said “yes.”

Q. Was anything said about logging it at all that day? A. Not at that time, no.

Q. Did you, yourself, hear any conversation by Mr. Stegmann, in other words, so that you could say what you heard him say about [1708] the purchase price of the property, as to what it was?

A. No, he made no reply when Paul stated how he had set the business up. Mr. Stegmann made no reply.

Q. Then your brother Paul, while you were there and Mr. Stegmann was there, had told Mr. Stegmann, or in conversation had outlined that the prices for the property were \$80,000 for the Lot 1, and \$20,000 for your interest in Lot 2?

A. That is right. He was telling me and Mr. Stegmann were all just sitting there.

(Testimony of Ethel Winans.)

Q. Mr. Stegmann never said "yes" or "no"?

A. No, he didn't.

Mr. Buell: That is all.

The Court: Mr. Krause, any redirect?

Mr. Krause: Nothing further.

(Witness excused.)

The Court: We will recess until two o'clock.

(Noon recess taken.) [1709]

Afternoon Session—2:00 P. M.

(Trial resumed.)

The Court: Mr. Krause.

Mr. Krause: We will call Ross Winans.

ROSS WINANS

third-party defendant, called in behalf of the third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. You are Ross M. Winans?

A. Yes, sir that is correct.

Q. Where do you live, Mr. Winans?

A. Hood River.

The Court: Are you hard of hearing?

The Witness: I do not think so.

Mr. Krause: He can hear pretty well.

Q. How long have you lived in Hood River?

(Testimony of Ross Winans.)

A. Since 1887.

Q. Do you live in the town of Hood River itself?

A. No, we live out eleven miles out from Hood River near what we call the Punch Bowl on the Hood River Road. Hood River is our home, always has been.

Q. You are one of the defendants in this case?

A. That is correct. [1710]

Q. You were a son of Wilson Winans?

A. Wilson Ross Winans.

Q. Ethel Winans is your sister, who was on the stand? A. That is correct.

Q. Paul Winans is your brother?

A. Yes, sir.

Q. Are you acquainted with Lost Lake and the property that you folks owned or had an interest in up there? A. Yes, from childhood.

Q. From childhood? A. From 1888.

Q. Do you know Walt Stegmann, Mr. Winans?

A. Yes, I have met him several times.

Q. What was the first time that you met him?

A. It would be August 11, 1951.

Q. Where did you meet him?

A. Well, at our place, at the Punch Bowl Service Station.

Q. And that is the same, is that the same service station where Paul had his office?

A. That is correct.

Q. Do you know about what time of the day you met him?

(Testimony of Ross Winans.)

A. Well, not exactly. It was early in the forenoon of the 11th.

Q. Did you have anything to do with the preparation of the signing of an option for the sale of the property up there?

A. No, I had nothing to do with that part [1711] of it.

Q. Paul looked after that?

A. He looks after our business, yes.

Q. Now, did you make a trip up to Lost Lake with Walt Stegmann and Paul and his family on that same day? A. Correct; that is correct.

Q. How did you ride up; in whose car?

A. In Mr. Stegmann's convertible Buick.

Q. You rode up in Stegmann's car?

A. That is correct.

Q. Who else was in the car with you?

A. Well, my brother Paul and his family, his wife and——

Q. You were all in that one car?

A. Yes, sir.

Q. How long does it take to drive up to Lost Lake from the Punch Bowl Service Station where you started?

A. Well, to be careful, it would be about fifty minutes, careful driving.

Q. Do you know whether the option had already been given to Walt Stegmann at the time you went up there to the lake on the 11th of August?

A. No, it was not completed, at least.

(Testimony of Ross Winans.)

Q. Well, I mean, do you know whether the option had been given to him?

A. Not before we went up there, no.

Q. Not before you went up? [1712]

A. It was after we came back.

Q. On the way up there, was there any conversation regarding the title to the property?

A. Yes, there was considerable.

Q. What, if anything, do you recall being said about the title?

A. Well, one thing, I didn't do much of the talking myself, was to correct the title, for our congressman to get it corrected through an Act of Congress.

Q. Did Mr. Stegmann have anything to say about that?

A. Yes, he, well—I had not, but my brother had been in to it more or less with Senator Cordon, or through his office, and my brother talked along all about getting Cordon to carry it on through, and Mr. Stegmann then referred to Senator Cordon, Morse, that he was a friend of himself and his father.

Q. Well, what did he refer to Morse for? What did he say Morse would do or could do?

A. Well, he seemed to think as they were acquainted with Morse that he was better qualified than Cordon.

Q. To get this Act of Congress?

A. That is right.

(Testimony of Ross Winans.)

Q. Did he say any more about Morse that indicated his acquaintance with Mr. Morse?

A. Yes, he touched on that he would—that they had rode together at the rodeo, about him getting hurt by the horse, and just general conversation of what had happened. [1713]

Q. When you say they had rode in a rodeo together, do you mean Walt Stegmann and Senator Morse had attended rodeos together?

A. Well, other than what I heard him say, that is all.

Q. No, I want you to say what you heard him say?

A. Well, that is what he said, that they had rode together.

Q. That he and what?

A. That he and Senator Morse had rode together, yes, sir.

Q. Had rode together. Now, did you ever meet Chet Parker, Mr. Winans?

A. No, not until we had first finished our second survey party, that is, with Bogar and Haynes on the 18th of August. Then they was coming Saturday. They couldn't finish. They had to go back, and later Mr. Haynes and Kuns returned on Friday evening and we put in Saturday and finished on Sunday.

Q. You were along on the surveying parties, were you? A. Yes, I was.

Q. When these surveyors from Portland went out to do the surveying?

(Testimony of Ross Winans.)

A. Yes, we completed our work.

Q. Yes. Well, now, was Parker along on any of those trips?

A. Not to my knowledge. I didn't see him, anyway.

Q. I asked you when did you get acquainted with Parker, if you did meet him?

A. Well, that was later on towards, around, after the 30th or 31st of August when he came back to our place. I met them at [1714] the station.

Q. Who did you meet at the station?

A. I met, I was acquainted with Walter Stegmann, but not yet with Mr. Parker nor his son. We rode together.

Q. Parker and his son showed up that day?

A. That is the first I had seem them.

Q. Did you go up to the lake with Stegmann and Parker and his son and Paul?

A. Yes, that is right.

Q. On that same day? A. Yes.

Q. Did you have any conversation with Mr. Parker on that day while you were up there on the ground? A. Yes.

Q. Did you hear anything said regarding the title to the forty acres?

A. Yes, there was considerable said about it.

Q. What was said and by whom and to whom?

A. Well, much the same as what we had already gone over with Mr. Stegmann, that it was to be corrected, the title, through the Act, through our congressman and an Act of Congress.

(Testimony of Ross Winans.)

Q. Did that involve the 25 acres, too, that were bordering on the lake, or just the forty acres?

A. The back forty.

Q. Just the back forty. Now, did Mr. Parker say anything to [1715] you at all regarding who was going to be the—or, that is, regarding his getting any interest in the property up there?

A. Yes, later on in the——

Q. Tell us the circumstances of that.

A. ——in the day as they had evidently had been at work there previously before we went up, they had established a stake out on the lake front, and I went out with Mr. Parker and his son to chain that back to where the angle of this one-eighth, 80/100ths acres, angles off over to the south-west corner.

Q. Yes, well, you do not need to give us all that, but I wanted to know where you were.

A. Yes, I will get to that.

Q. When you were talking to Mr. Parker, then, was that right on the lake front?

A. Yes. After we got started a ways, he casually make a remark to me, he says, "This is the most beautiful lake that I have ever saw," and after that he says, "I must have some of it, but," he says, "Walt Stegmann is a hard man to deal with."

Q. Was anything said at any time by Parker or Stegmann that Parker was interested in the purchase of the property or that he was buying?

A. Not in my presence, I never heard anything

(Testimony of Ross Winans.)

about Mr. Parker coming in on it other than when he said he must have some of it.

Q. Other than he was going to try to get some of it from Stegmann, that he must get a [1716] piece of it?

A. That would be my understanding.

Q. Of the property from Stegmann?

Mr. Jaureguy: I am going to object to the witness' summary—I mean the attorney's summary—I get them confused.

Mr. Krause: Well, I listened to a lot of Mr. Jaureguy's testimony, your Honor.

The Court: I am only listening to the testimony from witnesses.

Mr. Krause: Very good, then.

Mr. Jaureguy: All right, with that understanding I will withdraw the objection.

Q. (By Mr. Krause): Mr. Winans, on this day up there with Parker and his son, you had some conversation with the son, I suppose, did you?

A. Yes, he being a nice lad, and we got talking about hunting, fishing and trapping.

Q. Fishing and trapping?

A. That was a little down my alley.

Q. Did Mr. Parker—well, you tell us, what did Mr. Parker do while he was up there?

A. Well, coming noon hour, as I remember, he sent the boy back to the car, wherever they had those fireplaces, this fire service building, and those fireplaces to build a fire. He says, "I must have my warm coffee." The boy was gone for a while, and

(Testimony of Ross Winans.)

finally Mr. Stegmann went, and brother Paul [1717] and I had, we had our lunch together, and we stayed out there on the property along the trail where that little bridge crosses the inlet and waited for them to return, which they were not gone very long, quite a little distance out there and back, but they made it in good time.

Q. Parker and Stegmann and the boy left, then, was that it? A. Yes.

Q. You remained there on the property?

A. Yes, Paul and myself.

Q. I do not think you understood my question, Mr. Winans. I wanted you to tell the Court just what did Mr. Parker do while he was out on the property. A. Well—

Q. What was he up there for; what was he doing?

A. What I saw was that he was running a staff compass getting the degree, the proper parallel of the property, right angles—well, not right angles but paralleling with the line of the property of the meander corner out to the quarter corner which would—this 8.88, eight-tenths acres and getting an idea where this piece of property was to held out of.

Q. That is the reserved area? A. Yes.

Q. Well, have you ever been on survey parties?

A. Yes, very much so.

Q. You have been on surveying trips from the time you were a [1718] youngster? A. Yes.

(Testimony of Ross Winans.)

Q. On this day that you were up there with Mr. Parker, were you surveying?

A. Well, in a way I were, or running a line. I understood what was going on.

Q. This staff compass that you talk about, is that an instrument used by surveyors?

A. Yes, sir, it is very accurate, I will say, a magnetic compass with its sight, and it is on a swivel there. You set your staff down on the ground, fasten that on, and balance it so that the needle balances, and it has got its degrees there. Then whatever you are running, 21, 22, 23, North, East of North, and your right angle from that, or if you want to go off to the corner of the swamp there, why, you take off——

Q. Is that why it is called a staff compass?

A. Well, I imagine.

Q. Because it sets on top of a stick or a staff?

A. Yes, it is not a transit, not a tripod.

Q. What did Mr. Parker do with respect to checking or running lines?

A. Well, he evidently took his degrees off of that compass and run where, as near as could be where that line belonged, and left the shoreline running west.

Q. Did you have anything with which to measure distances? [1719]

A. Yes, we had a steel tape, hundred-foot tape, which I held one end of it, and the boy went ahead forward and took and got on a line as Mr. Parker following up with the sight of the compass.

(Testimony of Ross Winans.)

Q. Under whose direction were you running the line? A. Running west.

Q. Yes, I know, but under whose direction; who was telling you where to go?

A. Nobody was really telling me. We were all three of us working together.

Q. Who were the three of you, the boy, Mr. Parker and you? A. Yes, that is correct.

Q. Did you at any time that day see your brother Paul and Parker in any kind of an argument?

A. Well, I will say, no, there was no word spoken in my presence, or any cause for angry words or controversy. They seemed to be very agreeable, and we parted that way when we returned to our home.

Q. In whose car had you gone up that day?

A. This was Mr. Stegmann driving a Mercury, Ford.

Q. That was a different car than he had the other time? A. Yes.

Q. All of you rode together in that one car?

A. Yes.

Q. You came back again together? [1720]

Q. How many hours were you up there altogether?

A. Well, the biggest talk which they had, Mr. Stegmann and Mr. Parker both had some cantaloupe, and we made good use of this, and when they were gone we got in the car and came home. We

(Testimony of Ross Winans.)

probably spent five or six hours all told out of the day.

Q. On the property or in the whole trip?

A. On the property and on the road and just visiting at this camp.

Q. Do you still work, Mr. Winans, or engage in any business?

A. Well, I work when I like to. I don't have to.

Q. When you are working, at what kind of work do you work?

A. Well, various work. I kind of work at mechanical or around machinery. I handle a paddle, considerably in the woods, paddle my own boat, in four months of it I had last year didn't hurt me.

Q. You have not been engaged in any business of any sort, though, lately?

A. No, not outside of what, what we have to take care of just as things come and go.

Q. Do you have a very wide acquaintance in Hood River County, Mr. Winans?

A. Well, I think yes. Yes, I think I have.

Q. Did you yourself read an article in the Hood River Sun regarding this lawsuit that had been filed by Title and Trust Company? [1721]

A. Yes, I have a copy of that in my files today.

Q. You read it yourself? A. Yes.

Q. Did other folks up there in Hood River County discuss that article with you?

A. Yes, considerably.

Q. And have your friends and acquaintances asked you about your connection with this suit?

A. That is right.

Mr. Krause: I think you may cross-examine.

(Testimony of Ross Winans.)

The Court: What is the theory of that claim here for a libel case, that the newspapers copies portions of the complaint that was filed in the case?

Mr. Krause: Yes, your Honor, the complaint, that the complaint was filed here by the Title and Trust Company, and at the time they filed it they knew that it would be given publication up in the community in which these people reside. We will have more on that later. There were a good many articles in the newspaper up in Hood River relating to this sale.

The Court: Are you claiming that Title and Trust or Parker gave the information to the paper?

Mr. Krause: Well, Title and Trust Company did by filing the complaint here, and I do not know to what extent Parker—we, of course, still have not got to that point yet, but we will have witnesses on a little later as to who gave publication to [1722] these false charges.

The Court: Have you any authority to show that a newspaper that copies——

Mr. Krause: We are not suing the newspaper; we are suing the Title and Trust Company.

The Court: Do you have any cases to support an award of damages to a defendant in a lawsuit on the ground that libel is slander?

Mr. Krause: Well, of course, the publication is in the filing of the complaint. If the complaint is filed in bad faith, I suppose the Court might agree with me now that that might give rise to a libel action, the publication of charges in the complaint.

(Testimony of Ross Winans.)

Now, as we view it, the law in Oregon is that if the complaint is filed in good faith upon reasonable grounds, they can say almost anything they want to about people in a complaint, but it is our contention that they had no grounds whatsoever for charging us with fraud and deceit when this complaint was filed.

Now, all the evidence is not in on that point yet because we are going to have to call some of the people that know about what they did. Of course, we have quoted Parker and Stegmann as well as the title company. Parker and Stegmann, if they communicated these false charges to the title company that we had misrepresented the ownership of that property, and the title company, if they did not communicate any such charges to them, would the title company take them out of the air? [1723]

The Court: Well, there is no use arguing that point now. We will wait until the evidence comes in.

Cross-Examination

By Mr. Ryan:

Q. Are you sure that this conversation about Senator Morse did not come up in connection with some newspaper publicity given to the senator at that time? A. Absolutely not.

Q. You are sure the conversation took place on the road up to Lost Lake? A. It did.

Q. Tell us what was said about the defect in the title on this trip, or, if anything about a defect was said.

(Testimony of Ross Winans.)

A. Well, they were to—Mr. Stegmann, especially, was the only one that I knew—was to know that we were not giving a warranty title to the back forty.

Q. Now, who said this, Mr. Stegmann, Paul Winans? A. Paul Winans.

Q. Can you repeat his words?

A. He says, "We are working on it through Senator Cordon to get the title cleared up through an Act of Congress." Mr. Stegmann brought up Mr. Morse, then, and said that they were friends, he and his father were friends of Senator Morse and they could use Senator Morse.

Q. How did this subject come up? [1724]

A. Pardon?

Q. How did the subject come up in conversation?

A. Well, along with the general talk about Lost Lake and about the property and how we had acquired it. I was with my father when he bought it.

Q. Was that all you were talking about all the way up?

A. Not necessarily. It was other—touched on other things, politics.

Q. Give us your conversation while on the way up? A. Politics and jokes.

Q. And what? A. Politics.

Q. And jokes?

A. And jokes to break the monotony, I suppose.

Q. Can you give us this conversation? I mean.

(Testimony of Ross Winans.)

just give us how the conversation transpired in the car. A. Well, as near as I can.

Q. Pardon me?

A. As near as I can. As we started out from home it was not long until we began to talk on about the property.

Q. What did you say about the property?

A. That the title on the back forty would have to be cleared up.

Q. Would have to be cleared up?

A. Yes. [1725]

Q. Was that the first conversation you had in the car?

A. I would not say that it was, no.

Q. That is the reason for my questioning. I wanted to know what your recollection of that conversation is.

The Court: You mean about this general subject, or about other things that were discussed on that day?

Mr. Ryan: My question is this, your Honor. What was the conversation in the car, the entire conversation, as near as he can recall it.

The Court: With reference to the property?

Mr. Ryan: With reference to anything. I asked him originally how this matter came up, but it was not entirely clear as far as I was——

The Court: Do you want him to tell you the jokes?

Mr. Ryan: Well, it might entertain us.

The Court: All right, Mr. Winans, try to give

(Testimony of Ross Winans.)

him a play-by-play description of what happened after you got in the car.

The Witness: Yes. Well, after Paul mentioned that we were endeavoring to get the title cleared on the back forty and, as said a moment ago, he referred then to Senator Morse, and maybe we talked about that for a little while, talked about politics, talked about the weather, possibly, and conditions of the road, and met a log truck and changed the conversation, and then back again to the property.

The Court: Mr. Winans, what Mr. Ryan is trying to find out [1726] is what was the occasion for discussing the defect in the title. How did that come about? Did you first start talking about the property, the back forty, and the front lot, Lot 1?

The Witness: Well, yes, it was not necessary to talk about the 25 acres. That was clear.

Examination by the Court

Q. Did you talk about it anyway? A. Yes.

Q. All right, now, what did you tell, or what did your brother Paul tell Mr. Stegmann, or say, while you were on that trip with reference to the 25 acres or Lot 1?

A. Well, as I understand that, we were in the clear on that because we knew previously that that was correct.

Q. Had you already made a deal with Stegmann to sell him the property for a certain stated amount prior to the time that you went on this trip?

(Testimony of Ross Winans.)

A. Not that I would know anything about, your Honor.

Q. Well, did you discuss the sales price of the property, then? A. I believe not, no.

Q. Did you discuss the timber on the property?

A. No, I think it was more the plot of home sites a fellow had laid out there when he was getting it ready for sale.

Q. Did you talk about how the property was acquired by your father?

A. I would not say that. I don't think so because I knew how that was for I was with him when he bought it. [1727]

Q. Well, we were not interested in that, Mr. Winans. We were trying to find out particularly, Mr. Ryan is trying to find out how this conversation happened to take place, and what was said either by yourself or Mr. Winans or Mr. Stegmann, and we would like to have you tell us, relate as nearly as you can, the conversation of Mr. Stegmann and your brother Paul and yourself, if you participated in it, in their own words, in the words used by those people, if you can.

A. Well, Mr. Stegmann seemingly didn't seem to be much concerned about it.

Q. That is exactly what Mr. Ryan does not want you to say. He wants you to tell him not what you thought Mr. Stegmann thought or his appearance of concern or unconcern, but what did Mr. Stegmann say and what did your brother Paul say?

A. It is this, that Paul says, "We will get Sena-

(Testimony of Ross Winans.)

tor Cordon and ask him if he is already working on it to get an Act of Congress to clear up that back forty." And Mr. Stegmann says, "We will work through our friend, Senator Morse."

Q. Did your brother Paul tell him in your presence on the trip that the Government claimed ownership of that Lot 2 of the forty-acre tract?

A. As near as I can remember, yes.

Q. What was the nature of the defect in that title to Lot 2, not what the real nature of it—what did your brother Paul tell him was the difficulty with that title? [1728]

A. Other than the Government claimed that as it was not surveyed, the State gave title to it to Macrum and through Macrum to my father.

Q. Was there any discussion relative to a claim having been made to Pacific Abstract & Title Company some years previous? Was that discussed?

A. That I couldn't say.

The Court: Well, I did the best I could, but is there anything else you would like to ask him with reference to that?

Cross-Examination

(Continued)

By Mr. Ryan:

Q. Was it your understanding that you people had a good title to that; that you had a right to that property? A. We had a warranty deed.

Q. You felt at the time that you had a right to that property? A. Yes.

(Testimony of Ross Winans.)

Q. Did your brother Paul feel that, from what he said?

A. I would not say what Paul said, but I saw——

The Court: That question has been asked each of the witnesses, and I do not see the relevancy except insofar as it might cast some doubt as to what they actually told these other people.

Mr. Ryan: That is the point, your Honor. That is the extent of the questions.

The Court: Mr. Jaureguy? [1729]

Cross-Examination

By Mr. Jaureguy:

Q. I wonder if I could have Exhibit 303.

If you do not mind, Mr. Winans, I would like to kind of look over the map with you.

A. It is my kind of map.

Q. And see if you can tell me anything about it. Did you ever make any maps?

A. Oh, in a rough way.

Q. In a rough way. Does this look at all familiar to you? This says, "Lost Lake," there.

A. Yes.

Q. This, I think, is supposed to be north up here. That is south; this is Lost Lake, and so this is west, you see?

A. On the map they are correct.

Q. How does that map look to you? Have you seen it before?

(Testimony of Ross Winans.)

A. I have seen the lake, but what is this, this meander line of the lake (indicating)?

Q. I was wondering if you could figure it out better if north was up.

A. That is what I have always been told.

Q. Whoever made it put it upside down. That is the meander corner there, isn't it? That is the north boundary of your property there, isn't it?

A. The sixteenth—yes. [1730]

Q. This is the lake here?

A. I am talking about the land.

Q. This is the land? A. Yes.

Q. And this is divided into lots, 1, 2, 3, 4, 5, 6, 7, 8, 9 small lots and one big one. How did it happen to be in that number of lots; do you know?

A. Well, if this was later on, why, I suppose why—if this is the Government's lot, why, I don't know anything about it.

Q. Suppose it is later on, then why?

A. Because my father had it platted.

Q. This map, I think we will agree, was made in probably August of 1951. August 11th, you have testified about August 11th going up to the lake with Stegmann and your brother?

A. That is right.

Q. And you have testified about August 27th and 28th and about August 31st?

A. Around that time.

Q. Why would this be nine lots, nine small lots and then one big one; could you tell us?

(Testimony of Ross Winans.)

A. No, I wouldn't know anything about it.

Q. You do not know anything about it?

A. No.

Q. Did you ever see any maps during the time of these negotiations? [1731] A. No.

Q. You never did?

A. No, I am positive—all I know is the Government map.

Q. You recall, I think, in your testimony, that the reserved area was to be a little over eight acres?

A. 8.88.

Q. 8.88, you have got that exactly. Where was the reserved area supposed to be?

A. Well, it would be what is left of it on the southeast portion of it out to the southwest corner of the 25 acres.

Q. Over to the southwest portion of the 25 acres? A. Say that again?

Q. You say the 8.88 reserved area was supposed to be in the southwest portion of the——

A. Southwest and southeast on the lake shore.

Q. Southwest and southeast, in other words, the southern portion of it? A. That is correct.

Q. Did you and Paul want to have any on the northeast portion?

A. Well, we would like to, but Mr. Stegmann—it originally was my father's camp site.

Q. Northeast quarter?

A. When we first came on the property from the trail.

(Testimony of Ross Winans.)

Q. Do you know whether or not this map was not made so as to give the whole lake front, as far as that is concerned, northeast [1732] and southeast, all of it?

A. Well, maybe you do not quite understand me there.

Q. No, maybe not.

A. Well, I am talking about all this 8.88, what I am getting at is the corner of the boundary.

(Discussion off the record.)

Q. You say, I didn't quite understand you. You started to explain it to me.

A. Isn't that all right now?

Q. No, I haven't quite got it yet. I was disturbed.

A. Well, I am talking of the corner, boundaries of this 8.88.

Q. Yes? A. When I refer to the——

Q. Reserved area?

A. Northeast boundary running west, angles off to the southwest corner of the 25, and then east to the lake shore, and the iron stake is the boundary, is the boundary of that 8.88.

Q. The way it is now?

A. That is the way I understand, yes.

Q. The way you finally got it?

A. Yes, that is the way I understand it.

Q. But isn't this map with this area along in the northeast corner and going right down, is that the way you originally wanted it?

A. I wouldn't know. [1733]

(Testimony of Ross Winans.)

Q. You would not know? A. No.

Q. Well, now, could you give me some idea from this map—this is a creek, was it?

A. Yes, inlet.

Q. Where it was that Chet Parker was when he told you that Walt Stegmann was the hired man to deal with?

A. This is the lake (indicating)?

Q. That is the lake.

A. No, this don't look good to me.

Q. It does not look good to you?

A. No, well, we will say this is the lake.

Q. Yes.

A. Well, we should start right in and pace like this, run out here and out here to the southwest corner of the 25 acres on an angle like this.

Q. Here is the southwest corner of the 25 acres here. (Indicating.)

The Court: Mr. Jaureguy, you should use a different kind of a map, one he is familiar with.

Mr. Strayer: How about this one? It is a little better.

The Witness: Yes, one to show what the lake looks like.

Mr. Strayer: Here is the Government map (tendering map).

Q. (By Mr. Jaureguy): Now, there is a Metsker map and here is the Government map, and here is a chart. Which one are you best [1734] used to? You see, that says "W. R. Winans." That is your father, isn't it (referring to map)?

(Testimony of Ross Winans.)

A. Well, let's see, paralleling this line out here, and then up to the corner here.

Q. That is what? This is the creek here, right there, isn't it?

A. This is the creek, that is right.

Q. What is it you were trying to explain there?

A. Well, where Mr. Parker and his son and myself were running this line here, out here evidently.

Q. I am asking you now where you were when Parker tried to tell you that Walt Stegmann was the hired man to deal with?

A. That was when we were right along close to the water, looking over the water and back across the lake.

Q. Well, you are pointing north of your property now? A. Looking out here on to the lake.

Q. Yes, and, as a matter of fact, had there not been arguments there at all about what the reserved area was going to be? A. No.

Q. You never heard any arguments between——

A. None whatever.

Q. At any time you were up there?

A. None whatever at any time or since.

Q. At any time when you were up there you never heard any arguments?

A. No; no, we got along nicely, and there was no reason for any [1735] and no cause for any argument.

Q. Now, this time just let me go a little further. At no time you were up there, there were never any arguments between Paul and Walt Stegmann?

(Testimony of Ross Winans.)

A. No.

Q. About the reserved area? A. No.

Q. You never heard any argument between Walt Stegmann and Chet Parker about the reserved area?

A. I wouldn't know anything about that.

Q. Well, I mean when you were up there.

A. No, I didn't hear at all.

Q. When you were there you never heard any arguments between your brother Paul and Chet Parker about the reserved area?

A. Absolutely not.

Q. You did not? A. No.

Q. When they were standing on the bridge there?

A. No.

Q. They were on the bridge a long time, were they? A. What was that?

Q. They were on the bridge a long time, were they? A. No.

Q. Pardon?

A. No, we didn't have any occasion to [1736] stay.

Q. I am not talking about you; I am talking about your brother Paul and Chet Parker.

A. No, absolutely.

Q. Not there at all? A. No.

Q. So that from the time the negotiations for this deal started until the very end, you never heard about any arguments between any of these parties on the reserved area?

A. No, this court one is the first.

(Testimony of Ross Winans.)

Q. First place you have heard it?

A. Yes.

Q. Who mentioned it in the court room first? You heard Paul talk about it? Didn't you hear that in the court room?

A. Well, I have been down on one or two other occasions and—yes.

Q. So when you heard your brother Paul talk about the arguments on the reserved area, that is the first you ever heard about it?

A. Yes, there is nothing to it.

Q. That is what we want to know.

A. Absolutely nothing.

The Court: Maybe he does not understand the word "argument." Maybe discussion.

Mr. Jauregui: Well, I have been using the word arguments, whether there was any argument. Now, I will ask whether there were any discussions that you heard about where that reserved [1737] area should be, discussions between your brother Paul and Stegmann? A. Absolutely no.

Q. Discussions between Stegmann and Chet Parker? A. Absolutely no.

Q. Discussions between your brother Paul and Chet Parker? A. The same.

Q. The same; the first you ever heard of it was when you heard your brother Paul testify in the court room? A. Yes.

Q. You say that when you were going up there to the lake on August 11th with your brother and Walt Stegmann that nobody mentioned the fact that

(Testimony of Ross Winans.)

you theretofore had collected from the Pacific Abstract & Title Company on a title policy?

A. No.

Q. At any other time—— A. No, sir.

Q. At any other time did you ever hear your brother Paul tell any of the parties that we have been talking about about the title policy that you had with Pacific Abstract? A. Never.

Q. You never heard him say that he had a title policy? A. Yes, I understood that at one time.

Q. No, I don't mean—I will have to correct myself—I made a mistake. I didn't mean to say that you ever heard it. I mean, [1738-39] did you ever hear him say anything about a title policy to Walt Stegmann? A. No.

Q. Or to Chet Parker? A. No.

Q. Or tell them that he had collected money on a title policy? A. No, sir.

Q. You knew that the money had been collected on the policy? A. Yes.

Q. You are saying that with some hesitancy as though you are not sure.

A. Not necessarily, no.

Q. No, that is, you mean——

A. Nothing that I should not hesitate on.

Q. Now, I say you are sure; you knew about it?

A. Yes.

Q. Very well. You were with the boy quite a lot that day on the 31st day of August; were you not?

A. Well, pretty much. On the trip up there and back we got quite friendly.

(Testimony of Ross Winans.)

Q. And you had a deal on a bear skin?

A. Now, that is very common.

Q. Now, whereabouts was it on that day where you say your brother was telling Chet Parker about trying to get this Act through Congress? Where was that, in the car up there? [1740]

A. Yes.

Q. In the car on the way up? A. Yes, sir.

Q. So they didn't discuss that after they got up there, as far as you know?

A. Not to my knowledge, and I was with them practically all the while out there. When they went to lunch, that I wouldn't know, was to themselves.

Q. When your brother was telling Chet Parker on the way up there about getting this Act through Congress, was he a Cordon supporter or a Morse supporter? Did he feel that Cordon was the man to do it or Morse was the man to do it?

A. Not necessarily. He had some work through the attorneys, Cordon, I believe, and his attorneys were connected, that is all. Brother Paul evidently kind of liked that Cordon.

The Court: Mr. Jaureguy, I thought that this was a conversation with Mr. Stegmann and not with Mr. Parker.

Mr. Jaureguy: We have left that and come to another one. We were talking about the Stegmann conversation a little while ago. Now he is on the way up in the car; is that correct; am I quoting you right that on the 31st of August on the way up to Lost Lake in the car your brother told Chet Parker about trying to get this Act through Congress?

(Testimony of Ross Winans.)

A. Well, it came up, well, he didn't necessarily tell him, but it was talked along with other discussions. [1741]

Q. Who was in the car besides you and your brother and Chet Parker?

A. Well, Stegmann was driving. I was in the front seat with Walter. Chet and his son was in the rear seat with Paul.

Q. Were the five of you in the car going up?

A. That is correct.

Q. Was that right after you left your brother's place or getting pretty close to Lost Lake?

A. Oh, no, on the way. I would not just say what point, but as I say, it takes about 50 minutes to take the trip.

Q. Did Parker go out to a stake in the lake, walk out to the stake in the lake?

A. I didn't see him do it.

Q. What did you say? I couldn't catch up with you in my notes.

A. Well, he went out to where more or less water, and sank this staff compass up and took a sight, had me hold the chain where that, from the starting point and then took the forward end and went forward and kept him on a line, and then, and we had to cross considerable windfalls, and we had to be a little careful not to get stuck because there are some deep water holes in there.

Q. That is when he told you what a beautiful lake it was?

A. That is correct.

(Testimony of Ross Winans.)

Q. Said he wanted a piece of it?

A. Yes. [1742]

Q. But Stegmann was the hired man to deal with?

A. That is right.

Q. This compass, how do you work that? You put a stake in, then you take that compass——

A. Yes, it fits right on to a connecting socket there, sets on top of the stick. Then there is a ball and socket there and you level that up and tilt it until the needle balances, and you see, here is your needle (indicating).

Q. And you get north?

A. Yes, yes, north. If you want an angle, why you turn around here to 23, your right angle——

Q. Then you tell the fellow down here where to take that chain?

A. That is correct.

Q. It is not very hard to do that, is it?

A. I don't know, I watched the other fellow do it.

Q. Where was Stegmann all this time?

A. Well, he and Paul went to drive some iron pipe on some stakes, some of the work that we had finished up with Mr. Haynes and Kuns.

Q. Went to drive pipes, iron pipes in the ground?

A. Yes, about like that.

Q. How many?

A. Oh, I think probably six or eight of them. We used in the neighborhood of one, two, three, and I think there was about [1743] four or five of them up there laying by the——

Q. It didn't take them five or six hours to do that, did it?

A. Not necessarily, no.

(Testimony of Ross Winans.)

Q. What did they do the rest of the day?

A. On the road.

Q. What is that?

A. On the road eating cantaloupe.

Q. No, I mean after they got there and before they went back, while they were up there what did they do besides drive those four stakes.

A. They come right back to where we were at.

Q. Then what did they do?

A. Went to lunch.

Q. Is that all the work they did that day?

A. Yes, sir.

Q. Drive three or four stakes is all that your brother and Walt Stegmann did that day?

A. Yes.

Q. That is all you are sure of?

A. That is all they put in, put them in. I saw them last summer.

Q. How long were those stakes, you say about four feet long?

A. About forty-five, thirty-five inches long.

Q. How far in the ground did they drive them in?

A. Oh, drive in for two-thirds of the length to leave enough [1744] stake to find them.

Q. You say that driving four of those stakes was all the work that Walt Stegmann and your brother did that day?

A. Yes.

Q. You are sure of that?

A. Positively.

Q. You say positively or possibly?

(Testimony of Ross Winans.)

A. Positively.

Q. Positively; that is what I thought. That is all.

Cross-Examination

By Mr. Strayer:

Q. Mr. Winans, do I understand that when you went up to the property on August 11th the contract had not yet been drawn up?

A. No, just a matter of looking at the property.

Q. Do you know whether Mr. Stegmann had been to the property before that day?

A. I couldn't say.

Q. There was nothing in your conversation on the way up that indicated whether he had been there before or not?

A. Not in my presence, no.

Q. Do you know from anything, either from what he might have said or from what your brother Paul might have told you, do you know whether they had discussed the price before that [1745] trip?

A. That I wouldn't know.

Q. Did you get an impression when they were talking about this title matter, did you get an impression that this was a rehash of something that they had gone over before?

A. No.

Q. You got the impression that it was brought up for the first time, then, on this trip?

A. Well, on that deal, yes.

Q. Well, but did you get the impression that Mr. Stegmann had heard about it before, or did this seem to come as a surprise?

A. Well, yes, when we talked with him, Paul

(Testimony of Ross Winans.)

and his family any myself and Mr. Stegmann drove up in the Buick. We talked about it then. That is when it came up.

Q. There was you and your brother Paul, Mr. Stegmann and the boy, and who was the fifth member?

A. No, that was the last trip. We are talking about the first trip on the 11th.

Q. Yes, the first trip, August 11th, who was along on that trip?

A. My brother Paul, his wife and children and myself, and Walt Stegmann.

Q. All right, now, your brother Paul, you say, brought up this matter of a defect in title or a Government claim; is that right?

A. He mentioned it, yes, just casually mentioned that they were [1746] not selling that part of it.

Q. Oh, he said they were not selling the forty acres?

A. He did not say they were not selling it, but he says that is in doubt, we have to correct it, correct the title.

Q. Well, did you understand that Mr. Stegmann was buying the forty acres as well as the title?

A. Well, on the first survey, day of the first survey when Mr. Bogar and Mr. Haynes, we ran out to the corner there. Walter and his brother Carl came to us just as we were about to get to the corner, and we had to have lunch and somebody asked Carl if he would go back to the car and bring over the lunch so we would not have to all go back and put in

(Testimony of Ross Winans.)

so much time as we might on the surveying. While he was doing that, why, Walter was close to me, and he went out to this meander quarter corner. It is a piece of pipe, stands about 25 inches or possibly 30 above the ground, and it has a bronze marker, and he laid his hands on it and looked out across in the west, the southwest corner, and says, "I want this forty." I don't know whether he was talking to himself or to his brother, but I heard him make that remark.

Q. Who said that, Walter Stegmann?

A. Walter Stegmann.

Q. That would have been about the 30th of August? A. That would have been the 18th.

Q. The 18th of August; is that right? [1747]

A. I had better correct that.

Q. Well, now, the option—to get you straightened out on your dates now—the option was made out and signed on August 11th? A. Yes.

Q. And it covered both Lot 1 and the back forty. Do you have something that will refresh your memory on dates?

A. Just a moment please. (Witness consults document.) Yes, this was on August 18th, 1951.

Q. August 18th?

The Court: What are you looking at?

The Witness: My own memorandum.

The Court: You prepared this yourself?

The Witness: I did.

The Court: When did you prepare this?

(Testimony of Ross Winans.)

The Witness: Oh, it is pretty much—that has been copied from the original.

The Court: The original what?

The Witness: Of our work.

The Court: Of whose work? This is a story of how this transaction happened?

The Witness: Yes.

The Court: Did you work this up yourself?

The Witness: Yes.

The Court: Did you give Mr. Krause a copy?

The Witness: He saw it. [1748]

The Court: He saw it?

The Witness: He has gone over it.

The Court: And this is just to refresh your memory?

The Witness: Yes.

The Court: You had better hand that over to Mr. Strayer. You had better turn that over to Mr. Strayer.

The Witness: Will I get it back?

Mr. Strayer: Yes, you will get it back.

The Witness: I will set a bear trap for you.

The Court: Have you got a copy of it, Mr. Krause?

Mr. Krause: I have not, your Honor, no. He showed it to me, though.

The Court: Show it to Mr. Jaureguy.

Mr. Jaureguy: Yes, I would like to see it.

(Discussion off the record.)

Q. (By Mr. Strayer): I understand this memorandum that you have handed me, Mr. Winans, this

(Testimony of Ross Winans.)

is a memorandum that you made up trying to put together your recollection of what happened on various dates; is that what it is?

A. That is right.

Q. In making this up, did you talk it over with Paul Winans or the members of your family?

A. Oh, yes.

Q. Does this represent a sort of a consolidation of what each of you remembered? [1749]

A. No, it is all here.

Q. It is all your own? A. Yes.

Q. All your memory?

A. How I helped out on it.

Q. Did you have a disagreement with your brother or anyone else? A. No.

Q. Regarding any of these dates?

A. No, I just wanted to do that. I have got my own typewriter.

Q. You say you have talked this over with Paul?

A. No, absolutely not.

Q. Has he seen this?

A. I have let him look it over, yes, I have let him read it.

Q. But this is all your own recollection and not his?

A. Certainly; Paul had nothing to do with that whatever, or anybody else. I am not an expert, but that is the way I put it together.

Q. All right, then, Mr. Winans, getting back to my question a while ago, now, on August 11th was the first date that you met Mr. Stegmann?

(Testimony of Ross Winans.)

A. That is correct.

Q. And the first time that you all went up to the property?

A. That is correct.

Q. Now, it was on the same date that Mr. Stegmann took the [1750] contract, the option?

A. That is right.

Q. On both the lake front property and the back forty acres; is that right?

A. Yes.

Q. All right. Now, my question to you is: On that day was there any discussion of what property Mr. Stegmann was going to take? Did you have the impression that he was buying only the lake front property, or he was buying both that and the back forty?

A. He wanted it. That is all I can say.

Q. He wanted it, you say?

A. He wanted the whole 65 acres.

Q. Well, then, he must have said something that makes you think he wanted it on that day.

A. Yes.

Q. Do you remember what he said?

A. He says, "I want it." When we went on the survey, he says, "I want this back forty."

Q. You were not surveying on the 11th, were you?

A. No, that was our first trip when we went out to look the property over.

Q. Well, then, he said that he wanted it while you were out there on the 11th, you mean?

A. No, on the 18th. [1751]

Q. But, Mr. Winans, by the 18th he had already acquired the contract on it.

(Testimony of Ross Winans.)

A. Well, he still wanted to make sure of it.

Q. Apparently he had decided on the 11th that he wanted it because he took a contract to buy it for a hundred thousand dollars. Now, was there any talk about that on the 11th about whether he wanted the back forty or not?

A. Well, we ran a line out there. He saw what it was. He saw the timber. If he was after timber, we did not know what he wanted. We supposed he wanted home sites.

Q. Did you take him out and show him the land on the 11th? A. Yes.

Q. Did you show him the quarter corner on that day? A. We did, the bronze marker.

Q. Did you show him where the lines were and where the timber was?

A. We didn't show him timber, just showed him where the lines was and the corner. That is all we was interested in was the corner. That is, as far as we went was to the quarter corner.

Q. Getting back to your trip up there in the car on the 11th, Mr. Winans, when this matter of title came up, did you have the impression that your brother Paul was talking about land that was included in his deal with Mr. Stegmann?

A. No, no.

Q. Or what land that was not? [1752]

A. No, I didn't know anything about that.

Q. You had the impression that that was the first time that the title had been mentioned to Mr. Stegmann? A. Yes.

(Testimony of Ross Winans.)

Q. Did Mr. Stegmann seem to be surprised to learn something was wrong?

A. No, he didn't want us to tell him anything.

Q. He didn't want——

A. He didn't want us to tell him anything.

Q. Why do you say he was surprised?

The Court: He did not say he was surprised.

Mr. Strayer: Then I misunderstood you.

The Witness: Yes.

Q. (By Mr. Strayer): I thought you said that he did seem surprised?

A. No, he didn't want to be told.

Q. Oh, I see, but he did not seem surprised?

A. Yes, he seemed to know more than we did about it.

Q. Then you had the impression that he already knew about the Government claim, then, did you?

A. Evidently, yes.

Q. Well, then, Mr. Winans, as I understand you, you went back up there again on the 18th, and on that occasion there was yourself and your brother Paul, Stegmann, and Parker and Mr. Parker's son? [1753]

A. No, Parker was not with us on the 18th. I didn't know him on the 18th.

Q. What date was it you were up there doing your surveying? Was it on the 30th or 31st?

A. In or about the 30th or 31st. I would not be positive.

Q. That is the date I want, then. It was on that

(Testimony of Ross Winans.)

date that there was yourself, Mr. Parker and his son, Mr. Stegmann and your brother Paul?

A. That is correct.

Q. And is that all? A. Yes.

Q. As I understand it now, at the time that Mr. Parker made the statement that he wanted the piece of that property, you were working with Mr. Parker and his son? A. That is correct.

Q. Where was Mr. Stegmann and your brother Paul?

A. They went out to drive those iron stakes.

Q. How did they know where to drive them?

A. Well, we had already run around there with the surveyors, and we had a wooden stake out on the southwest corner of the 25 acres and ran out east from there to the lake, and they went out to establish those two iron markers.

Q. Well, then, they were working behind you?

A. We were ahead. They were off to themselves.

Q. You were running the lines, and they were coming along [1754] behind you putting iron stakes out?

A. Well, we didn't complete the line that I was on, especially the chaining of it.

Q. Would you say that Mr. Parker was acting as a compass man on the survey?

A. I don't know what he was acting, but he understood his compass.

Q. Well, is that what you call the man that reads the compass and keeps you on your line, a compass man? A. Yes.

(Testimony of Ross Winans.)

Q. And it is his job to set the compass, then to to sight and to give you signals to tell whether you are on the line or not?

A. Yes, most always we carry a red rod marker with colors on it. I have done lots of that with parties of surveyors, rod work.

Q. Were you surveying the lots at that time, or were you surveying merely the reserved area?

A. We were running the boundaries around the 25 acres; that was all.

Q. Doing what?

A. We were running the boundary around 25 acres.

Q. You were not surveying the reserved area at all, but——

A. That is with surveyors. Later they came back, Mr. Parker and Stegmann came back and laid out those 8.88. [1755]

Q. Yes, but what I am getting at—let me finish my question first, if you will—as I understand you then, you and Mr. Parker and his son——

A. Yes.

Q. ——were surveying the boundaries of Lot 1. You were not surveying the reserved area?

A. No.

Mr. Strayer: That is all.

The Court: He did not say that.

Mr. Strayer: He did not? What did he say?

The Court: Did you not testify that when the surveyors were there you surveyed the boundaries of Lot 1, but when Mr. Parker was out, then you

(Testimony of Ross Winans.)

were surveying the reserved area; isn't that your testimony?

The Witness: Yes, that is correct.

Mr. Strayer: Then may I go back, then?

Q. You and Mr. Parker and his son, then, were surveying the reserved area?

A. That is correct.

Mr. Strayer: That is all.

The Court: Mr. Jaureguy, you may proceed again if you have any questions.

Cross-Examination

(Continued)

By Mr. Jaureguy:

Q. This typing here, do you typewrite with what they call the [1756] touch system? How did you work that? Did you type that yourself?

A. I did. What is wrong with it?

Q. Well, it looks very good to me. Did you do that at home? A. Certainly.

Q. In your own typewriter?

A. Yes, I own one.

Q. You put anything in there that you thought was of any importance in the case?

A. Well, as I remembered it.

Q. When did you do this?

A. Well, that has been done for more than a year.

Q. That has been done more than a year?

A. Some of it, not this piece.

(Testimony of Ross Winans.)

Q. I mean, this piece, when did you do this (indicating)?

A. Oh, I just recently copied that so as to get a little more——

Q. What did you copy it from?

A. From my old notes.

Q. Do you have your old notes here?

A. No.

Q. A week ago, would you say?

A. Oh, no, last evening.

Q. Last evening, and you put in here everything in this case that you thought of importance, didn't you? A. Well, as I remember it. [1757]

Q. Why didn't you put in here that your brother, Paul, told these fellows about the bum title you had? Didn't you consider that of importance?

A. Well, that is for you to figure out, not me.

Q. Why didn't you put in here that your brother, Paul, told Stegmann that they were trying to get an act through Congress to fix up your title?

A. It took too much time.

Q. Too much time?

A. Evenings are not long enough.

Q. Evenings are not long enough. Well, you have got a full page, single-spaced, here.

A. Yes, well, I used to do a good deal of that work on the old Premier machine.

Q. How long did it take you to copy that?

A. Oh, just an hour or so.

Q. An hour or so, but you didn't put anywhere in there of anything about a defective title?

(Testimony of Ross Winans.)

A. No.

Q. Or that your brother or you told anybody about the title being defective? A. No.

Q. Didn't your brother tell you that was important?

A. No, he had nothing to do with it.

Q. When did you first learn that that matter was of some [1758] consequence in this case, whether your brother had told anybody about the defective title?

A. Oh, that right now I wouldn't know. I just don't.

Q. Would you say last summer some time?

A. 1952?

Q. Yes.

A. No, whenever this—more likely after the summons was served.

Q. Sometime after the summons was served?

A. I went into it.

Q. Now, you said a little while ago, as I heard you, that the surveyors, Haynes and Bogar, were there when Stegmann went to the corner and looked down over the forty and says, "I want this forty acres."

A. That's right.

Q. They were there that time? A. Yes.

Q. Is that the first time that you ever knew that Stegmann wanted the forty acres? A. Yes.

Q. Up to that time you thought he only wanted 25 acres? A. That was all we were offering

Q. And all you were discussing?

(Testimony of Ross Winans.)

A. Yes, of course, we knew, we had the deed for 65 acres.

Q. So that on the 11th when you say your brother was telling [1759] Stegmann about the title to the forty being defective, at that time as far as you knew Stegmann was not going to buy the forty?

A. He didn't care whether he did or not.

Q. I say, as far as you knew he was not going to buy it.

A. Yes, didn't care whether he bought any of it.

Q. No, my point is whether at that time you did know that he was wanting to buy the forty?

A. No.

Q. And the first time that you learned that he wanted the forty was that day that Parker and Haynes were up there?

A. Yes, he says, "I want it."

Q. He wanted it?

A. I don't know who he was talking to, but that is what I heard him say.

Q. Which part of it did Chet Parker say he wanted? A. Well, that was not discussed.

Q. That was not discussed? A. No.

Mr. Jaureguy: All right, thank you.

(Witness excused.)

The Court: We will take a short recess.

(Afternoon recess taken.)

Mr. Krause: I think this statement should go in after they used it to examine him.

The Court: A self-serving declaration. They could put it [1760] in if there was any prior contradictory statement, but I don't see how you could use it. I am going to reject the offer unless the parties agree that it will go in.

Mr. Strayer: I rather think it ought to go in, your Honor, and I am going to offer it as our exhibit.

The Court: On what ground?

Mr. Strayer: Well, there are some contradictions between the statement and his testimony, and I think it should go in as explanatory of what his testimony is. There is only one conversation referred to in the document. All the rest seems to relate to people, places and dates.

Mr. Jaureguy: If he is offering it for that purpose only, I think it is admissible for impeachment, and there is no objection; but if he is offering it as substantive evidence of what goes in or corroborative evidence of what goes in, I object on the ground of self-serving.

The Court: I think you are absolutely right, Mr. Jaureguy.

Mr. Jaureguy: Thank you, your Honor.

Mr. Krause: I would say this, your Honor, that they read from this statement to the witness.

Mr. Jaureguy: Who read?

Mr. Krause: Mr. Jaureguy did. You read from the statement while you were interrogating him.

Mr. Jaureguy: Tell me one word I read.

Mr. Krause: For instance, you made a statement

in here that [1761] there was nothing said in here about a conversation.

Mr. Jaureguy: That is not reading from the statement.

Mr. Krause: Well, it is drawing a conclusion from the statement.

Mr. Jaureguy: That is correct.

The Court: He has a right to do that. It is only admissible on the ground of impeachment, and in view of the fact that it has been offered by Mr. Strayer for that purpose, it is admissible, but it is not admissible for any, to corroborate anything he said or as substantive evidence.

Mr. Krause: I did not claim it was evidence of that sort, your Honor, but it has always been customary, at least it is my observation, that when counsel interrogates a witness about notes that he made, that the notes go in.

Mr. Jaureguy: By the adverse party.

Mr. Krause: It may be they go in by the adverse party.

Mr. Jaureguy: Yes, that is the wording of the statute.

Mr. Krause: At any rate, Mr. Strayer offered it.

(Document, memorandum of August 11th, 1951, marked Plaintiff's Exhibit 93 for identification.)

The Court: It may be admitted.

(Document marked Plaintiff's Exhibit 93 for identification was received in evidence.)

Mr. Krause: Call Mr. Bogar. [1762]

LAWRENCE BOGAR

a witness produced in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Bogar, where do you live?

A. Where do I live? In Portland, southwest, 2605 Southwest Hamilton Street.

Q. What is your occupation or profession?

A. Engineering, civil engineering.

Q. Who are you with at the present time?

A. I am with the United States Army Engineers.

Q. Are you a licensed engineer?

A. Licensed in Oregon, State of Oregon.

Q. Your name has been mentioned here as one of the surveyors who went up to survey this property on Lost Lake in August of 1951.

A. **That** is right, I was up there the 18th of August, Saturday.

Q. Do you recall the date on which you were there? A. 18th of August.

Q. Did you have any other assistant with you, or any other surveyor?

A. Mr. Retlaw Haynes went up with me from Portland.

Q. Retlaw Haynes. Now, about how long were you up on the property engaged in your [1763] survey?

A. Well, a good eight hours at least.

(Testimony of Lawrence Bogar.)

Q. When you came down from Lost Lake, did you stop at Paul Winans' place?

A. Yes, definitely.

Q. By the way, had Mr. Walter Stegmann been up there while you were up there surveying?

A. The entire time that I was up there, practically. I was up there a few minutes before was all.

Q. You drove up in your own car, did you?

A. Yes.

Q. And Stegmann came up in a different car?

A. Yes.

Q. Do you know whether you left Lost Lake to go to Paul Winans' before Stegmann did, or did Stegmann leave first?

A. Lost Lake, I think I left a minute before, but he arrived, he passed me on the way down. He was back before I got back because I don't—

Q. Was Rose Winans down there before you got there, or was Ross with you?

A. You mean was he at the lake or at the—

Q. No, on the way down back to the Winans place?

A. He rode up with us, but I don't think he rode back with us.

Q. Will you just tell us what took place after you got back to Paul Winans' place?

A. Well, when we arrived we waited about half an hour, well, [1764] maybe about 20 minutes to a half hour while Stegmann and Mr. Winans were in the building.

Q. Now what building are you referring to?

(Testimony of Lawrence Bogar.)

A. The building, it is on the left-hand side of the road going up. There was an office, he had a desk in the room there. I forget whether it was a home or not.

Q. Walter Stegmann and Paul Winans were in there, you say, for about how long?

A. Oh, I would say 20 minutes, half hour, something like that.

Q. Where were you and Mr. Haynes at that time?

A. Well, we were outside right by my car.

Q. By the way, do you recall whether there was anyone there with Walt Stegmann?

A. You mean at Lost Lake?

Q. Yes, at the Lake.

A. There was two of them, two people, yes.

Q. Two people besides Walt Stegmann?

A. No, one person besides Walt Stegmann.

Q. Do you know who this other person was?

A. Well, I was introduced to him, but I have forgotten the name now.

The Court: Do you know if he was any relation of Mr. Stegmann's?

The Witness: I really don't.

Q. (By Mr. Krause): Well, was he traveling with Walt Stegmann? [1765] A. Yes.

Q. Can you tell us something about his appearance?

A. Not definitely, not enough to describe him, no.

(Testimony of Lawrence Bogar.)

Q. After Walt Stegmann and Paul came out of Paul's office, what did you do?

A. We went in the office and figured up the time, and he paid me, paid both of us by check, one check for both of us, and we made arrangements to come back next Saturday and finish up the survey. Mr. Winans gave me his telephone number and said he would like to have us back the next following Saturday.

Q. What time was that, approximately, when you got through and got your check and were ready to leave?

A. Oh, it must have been around eight o'clock, something like that.

Q. Did you leave for Portland when you had finished this and gotten your check?

A. Yes.

Q. Now, when you came out of this office, were Walt Stegmann and this other man still there?

A. No, I don't believe they were there. Never saw them.

Q. Was there anyone around there at the time that you left besides Winans and Ross Winans?

A. Not to my knowledge. We waited until they got through with their business so we could go in and get straightened up on our pay that day. [1766]

Q. Did you, while you were there, Mr. Bogar, see Mr. Parker, who is the gentleman sitting just behind the attorneys there; did you see him up there on the 18th day of August?

A. I don't believe so, no.

(Testimony of Lawrence Bogar.)

Q. Was he the man that was with Mr. Stegmann up at the lake?

A. No, I believe the other fellow was a younger fellow than that.

Mr. Krause: You may cross-examine.

Cross-Examination

By Mr. Ryan:

Q. When you came down to the Winans' office or gas station there, were you in a hurry to get on to Portland? A. Well, sort of.

Q. Did Mrs. Winans bring you over some lemonade?

A. Yes, somebody brought, I forget whether it was lemonade. It was some drink or something. We were quite thirsty.

Q. This gentleman that was apparently with Mr. Stegmann, was he outside with you people?

A. I don't know, could have been. I know I and Haynes were together. Whether he was——

Q. Were you and Mr. Haynes going over any of your notes made on the survey?

A. Well, briefly. There wasn't too much to go over right then.

Q. This was about dusk? Was it dark yet?

A. Just getting dusk, as I remember it. We did look at the [1767] notes.

Q. Did you say anything to Mr. Winans about wanting to get paid so you could leave?

A. No, we didn't. Mr. Winans mentioned that before we left Lost Lake. He said, "I will pay

(Testimony of Lawrence Bogar.)

you before you leave," so that is the reason we waited.

Q. You waited because rather than have the money sent to you, you would get it up there?

A. That is right, he told us to wait.

Q. Did you go into the office to get paid?

A. Yes, we went into the office.

Q. Was Mr. Stegmann in there at all when you went in? A. No.

Q. Can you remember whether he was outside or whether he left immediately, or what do you remember?

A. As I remember, Mr. Stegmann and Mr. Winans came out of the office together. Mr. Winans came over to us, said he would take care of us now. He had time to take care of us, so we went in the office and then we transacted our business. He paid us our check and gave me the telephone number and instructed us about coming back the following Saturday.

Q. Then what happened?

A. Then we left shortly after that.

Q. I mean, by "shortly after that" you mean you left when the business was done; you got in your car and left? [1768]

A. That is right.

Q. You didn't remain around the area?

A. Oh, I imagine a couple of minutes, something like that is all. We just left practically immediately.

Q. Did you see Mr. Stegmann's car?

A. No, I didn't.

(Testimony of Lawrence Bogar.)

Q. By that do you mean it was not there or you cannot remember that you saw it or you didn't see it? A. It wasn't there, I don't believe.

Q. You were up all day in the Lost Lake area working on the survey? A. That is right.

Q. Were you working with Mr. Haynes?

A. That is right, Mr. Haynes. Mr. Haynes and myself did the surveying. We had several others there to cut brush, just help out.

Q. Who were these several others?

A. Well, Ross Winans and Paul Winans and Stegmann, and the other fellow, and a couple of boys, I believe, Winans boys.

Q. Were they working separately or running ahead of you? How was that done?

A. Well, Ross Winans helped work more or less directly with us chaining. We were chaining and running transit, and the rest of the gang were more or less cutting brush, clearing the way, and Paul Winans was more or less ahead most [1769] of the time.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. I take it on this survey you made notes, field notes or something?

A. That is right.

Q. What happened to those?

A. I have them.

(Testimony of Lawrence Bogar.)

Q. You have them here? A. Yes, sir.

Q. You did not make a map?

A. Yes, we plotted up—we ran from the meander corner over to the quarter corner, and not knowing our exact course we meandered over to it and then we tied in with the quarter corner. In order to get the distance, we had to draw up a map and compute the distance.

Q. What happened to the map?

A. Well, I think Haynes has a copy of it. I have the notes.

Q. Then the second time you made for the reserved area, did you not?

The Court: He did not come back the second time.

The Witness: I did not come back, only just one Saturday there.

Q. (By Mr. Jaureguy): So you were [1770] only——

A. What we started out to do was just run around this 25 acres, and we went over to the quarter corner and went south about five hundred some feet.

Q. You did not go back the second time?

A. I did not go back the second time.

Q. Did Mr. Haynes; do you know?

A. Retlaw did. Retlaw Haynes came back with another fellow.

Q. So you did not know anything about the reserved area? A. No.

Q. Well, in determining when you should come

(Testimony of Lawrence Bogar.)

back again, was there any consultation with Stegmann?

A. Not on my part, there wasn't. I didn't have any business with Stegmann whatsoever on any occasion.

Q. When you left it was light enough when you got in your car so that you could see whether there were other cars there?

A. Oh, yes; it was getting dusk; it was not dark.

Q. Eight o'clock, I think you said?

A. Around eight o'clock, something like that.

Q. Well, now, you say that it was up at the lake that Mr. Winans told you to wait for him?

A. Oh, he mentioned that around, just about quitting time.

Q. It was not after you got down to his place that he asked you to wait outside while he went inside with Stegmann?

A. No; that is right, no, he didn't. When we got back they were inside the building. We waited outside. [1771]

Q. Without anybody's request.

A. Without anybody's.

Q. I mean without anybody's request except what you had gotten up to the lake?

A. That is right.

Q. Then the third man you have not identified that was with Stegmann, was he outside at the time?

(Testimony of Lawrence Bogar.)

A. I don't know whether he was outside or inside.

Q. Did these two men, Stegmann and the other man, did they have two cars or one; do you know?

A. One car.

Q. One car, and you had a car?

A. That is right.

Q. And Mr. Winans had a car?

A. That is right.

Q. So there were three cars there? And where did Mr. Winans park his car?

A. Mr. Winans' car was parked, as I can picture it, it was directly in front of the building.

Q. Where did Mr. Stegmann park his car?

A. I parked my car in front of Winans' car. I don't remember Stegmann's, the exact location of it I don't remember, but I remember mine particularly.

Q. Well, how do you know, then, whether Stegmann's car was not there when you left if you do not remember where it was parked? [1772]

A. We waited outside definitely until they were through because they both came out.

Q. I understand, and you——

A. And said goodbye, and he said, "I will take care of you fellows," and we went inside.

Q. I understand.

A. When I came back out I never saw them.

Q. Never saw them? A. Never saw them.

Q. But you do not know whether their car was

(Testimony of Lawrence Bogar.)

there or not because you do not know where their car was parked; isn't that correct?

A. Well, not definitely. I cannot locate the definite location of it now.

Q. So you do not know when you left whether their car was still there or not?

A. Not—to my recollection, it was not there.

Q. I thought you told us you did not know where it was parked?

A. You mean when you say I did not know where it was parked, did you mean did I know of the exact spot or exact location it was in the vicinity?

Q. I do not know. I am just taking your testimony. Now, isn't this a really fair way to state it, that when you went in there you understood that Stegmann's business was all over, and so you just assumed that he was gone? [1773]

A. More than assumed. I never saw the car. As I remember it, the car was not there.

Q. You did not have any reason for wanting to know whether Stegmann was still around or whether he was gone, did you?

A. I had no interest in it, no.

Q. I know, but at that time you had no reason for looking around to see if Stegmann was there, if the other man, or if their car was there, you had no reason? A. No, no definite reason.

Q. Not even curiosity, did you?

A. Well, might have been curiosity, but I had no business to conduct. That is for sure.

(Testimony of Lawrence Bogar.)

Mr. Jaureguy: That will be all.

Cross-Examination

By Mr. Buell:

Q. While you were up on the property, Mr. Bogar, did you have any particular conversations with Stegmann as to what his interest in the deal was?

A. No, as far as Mr. Stegmann was concerned, we were—we had very little conversation. We were busy all day. We were trying to get through and were—hardly any conversation, you might say.

Q. Was Mr. Stegmann cutting brush?

A. Well, yes, helping.

Q. Was he taking any of the readings [1774]
or——

A. No; you mean on any of the surveying?

Q. Yes. A. No, definitely not.

Q. You did not see him make any notes of what you were doing either, did you?

A. No, I never——

Q. Did you discuss surveying with Stegmann at all while you were up there?

A. Discuss, what do you mean discuss?

Q. Discuss the technical aspect of the surveying job? A. No, sir.

Q. The job you were doing? A. No.

Mr. Buell: Nothing further. Thank you, Mr. Bogar.

Mr. Krause: I have nothing further.

(Testimony of Lawrence Bogar.)

Cross-Examination
(Continued)

By Mr. Ryan:

Q. While you were waiting outside of the office there, did you see Paul Winans come out of the office with a piece of paper in his hand, or come out of the office and go up towards the house on the property?

A. When, when are you referring to?

Q. During this period in which you were waiting, Mr. Bogar?

A. I can't say that I——

Q. Did you see Walter Stegmann come out and go in again? [1775]

A. No, I didn't. I don't remember of seeing him come out and go in.

Mr. Ryan: That is all.

Examination by the Court

Q. Do you recall what kind of car Stegmann was driving?

A. It was, I believe it was green.

Q. A two-door sedan or four-door sedan, or an open car?

Mr. Jaureguy: Or a Jeep?

The Court: Or a Jeep?

The Witness: No, I believe it was a green Buick. I can't say for sure.

The Court: Did you see Stegmann's car when you arrived at the Winans service station?

(Testimony of Lawrence Bogar.)

A. When we arrived?

Q. Yes. A. Yes.

Q. When you left did you not see it?

A. That is the best I can remember, as I remember.

The Court: That is all.

Mr. Krause: That is all, Mr. Bogar.

(Witness excused.) [1776]

PERCY F. BUCKLIN

a witness produced in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Bucklin, you live at Hood River, do you?

A. I do.

Q. How many years have you lived there?

A. Well, since 1911.

Q. Your business is what? A. Banking.

Q. You are the manager of the First National Bank at Hood River? A. I am, yes.

Q. You were the manager in 1951?

A. Yes.

Q. Is that a branch of the First National in Portland? A. That is.

Q. Do you know Paul Winans? A. Yes.

Q. Had you had business dealings with him prior to the year 1951? A. Yes, quite a while.

Q. For some years?

(Testimony of Percy F. Bucklin.)

A. A number of years. [1777]

Q. Do you recall about Paul Winans coming in to see you about August 10, 1951, to talk to you about ascertaining the financial responsibility of a person who was talking about buying some property of theirs at Lost Lake? A. I do.

Q. You wrote a letter about that time to the First National Bank at McMinnville; did you not?

A. Yes.

Q. Would you please take a look at this Exhibit 319 and see whether that is a carbon copy of the letter which you wrote? A. Yes, it is.

Q. Do you recall why you were writing to the First National Bank of McMinnville?

A. As I recall, Mr. Winans had asked me previously to write to the First National Bank of McMinnville to see what financial information we could obtain on Mr. Stegmann.

Q. You mentioned that the transaction here involved about \$80,000? A. That is right.

Q. Where did you get that figure?

A. That is the figure that Mr. Winans gave me. In order to find out whether he was financially responsible, we had to give some figure to use on that.

Q. Indicating how big a transaction it might happen to be? A. That is right. [1778]

Q. You had asked in this letter that they telephone you? A. Yes.

Q. Did you get a telephone call from the First National at McMinnville? A. We did.

Q. What did you learn about Mr. Stegmann?

(Testimony of Percy F. Bucklin.)

A. The First National in McMinnville advised us to call Mr. Chet Parker at Vancouver or to call or write, get in contact with him, in other words.

Q. Did they give you his address at Vancouver?

A. I believe they did. We had an address, and I think they gave it to us. Where we got it I cannot definitely say.

Q. Did you write a letter to Chet Parker?

A. We did.

Q. At Vancouver, and did you receive a reply from him? A. Yes.

Q. I would like to have you look at Exhibits 320 and 321—they are already in evidence—to tell us whether that is a copy of your letter to Mr. Parker and his reply?

Mr. Jaureguy: All this has been gone over and admitted in evidence and identified.

The Court: There has been a lot of repetition in this trial, Mr. Jaureguy.

Mr. Jaureguy: Yes, that is correct.

The Witness: That is right. [1779]

Q. (By Mr. Krause): Those are the copies of your letter to Mr. Parker and a reply that you got from Mr. Parker? A. Yes.

Q. Would you look at the dates on there, Mr. Bucklin, please, and tell me whether those are the, that is, of your carbon, what is the date of your letter to Mr. Parker?

A. August 11, 1951, is this.

(Testimony of Percy F. Bucklin.)

Q. August 11th, and to the best of your recollection, was that the date on which you did write him?

A. I believe that is right.

Q. When did you receive a reply from Mr. Parker?

A. Well, our date is here, August 16, 1951, that is our bank stamp on there, incoming mail.

Q. Your incoming mail receives a stamp as to the date on which it is received?

A. That is right.

Q. And that shows August 16?

A. Yes.

Q. Mr. Bucklin, how long had you known the Winans family prior to the summer of 1951?

A. Oh, since about 1920.

Q. Were you familiar with Lost Lake and the country immediately around Lost Lake?

A. Yes.

Q. Can you tell us whether the people of Hood River, Hood River [1780] County, whether Lost Lake was a matter of any interest to them?

Mr. Jaureguy: Objected to as incompetent irrelevant and immaterial.

The Court: I do not see the relevancy of that, Mr. Krause.

Mr. Krause: Well, may I tell your Honor what we claim? This Lost Lake was a matter of interest to the people up there, and if they saw Lost Lake in the newspaper, they read the article. We wish to connect the publication of these charges against the Winans and the fact that people were interested.

(Testimony of Percy F. Bucklin.)

The Court: All right, for that purpose, but limited to that purpose.

Mr. Krause: Well, that is the only purpose I can think of.

Q. You had answered that question, had you, Mr. Bucklin, as to whether the people in Hood River County were interested in Lost Lake?

A. All the people in Hood River County are interested in Lost Lake. That is one of their practically only playgrounds.

Q. Is it a matter—when anything is published in the papers regarding Lost Lake, is that a matter of interest to the people up there?

Mr. Jaureguy: Let my objection go to all of this line and analogous lines.

Mr. Ryan: I want to object to that, too, your Honor, on the same basis. [1781]

The Court: Objection overruled.

The Witness: State that again, sir.

Mr. Krause: Would you read the question, please?

(Last question read.)

The Witness: Yes.

Q. (By Mr. Krause): Did you read the articles in the newspapers up there regarding the filing of a complaint against the Winans, the complaint in this particular case here by Title and Trust Company?

A. Yes, I did.

Q. I would like to have you look at Exhibit 15-D and ask you whether that is one of the articles that you refer to regarding the filing of this suit?

(Testimony of Percy F. Bucklin.)

A. It would be hard to tell, but it is one of the articles. There were so many of them published, but as to definitely saying that that is one of them, that would be hard to say.

Q. You say it is one that you did read?

A. I have read articles that were published in Hood River, but as to whether this was word for word, I would not be able to say on that.

Q. Well, just the general substance of the article, is it, according to your best recollection, is it?

A. Well, I would say this, that that is about the way that the articles that I read, it is the material that was covered in those articles. [1782]

Q. I would like to have you take a look at this one. I hand you Exhibit 325, and ask you—this is an article in the other newspaper in Hood River—and ask you whether that appears to be similar to the articles that you read?

Mr. Jaureguy: Other newspaper, you say?

Mr. Krause: There are two newspapers.

Mr. Jaureguy: Your pre-trial list has all three of these in the same paper.

Mr. Krause: Is that right?

The Witness: At the present time there is only one newspaper in Hood River.

Mr. Krause: I beg your pardon?

The Witness: At the present time there is only one newspaper in Hood River.

Q. (By Mr. Krause): Yes, but at that time there were two; were there not?

A. I don't remember exactly the immediate——

(Testimony of Percy F. Bucklin.)

Q. May I see that Exhibit 325 again, and the other two?

Well, this Exhibit 325 should be listed in the exhibit list as a news item from the Hood River News instead of Hood River Sun, and the other one, 15-D, is the Hood River Daily Sun.

Well, Mr. Bucklin, did you hear these charges against the Winans discussed among people in Hood River at that time?

A. It has been very common discussion, yes.

Q. Did you, that is, your bank, as a result of the filing of [1783] this complaint and the publication of those articles, change its attitude toward Mr. Winans, or the Winans, in connection with business transactions?

A. Well, I might answer that question this way, that since the first of the year we have required substantial collateral for all of the loans we have against Mr. Winans.

Q. Did he have some unsecured loans from your bank at the time these charges were filed against him?

A. Yes, he did. It was the practice——

Q. What did you do about that?

A. We have combined all of those except one small one that I have made him recently. We have one small unsecured loan, but the rest of them are all combined with collateral security.

Q. Had Paul Winans a credit line with you whereby he could borrow without security?

A. We have never set up a definite credit line.

(Testimony of Percy F. Bucklin.)

We have loaned Mr. Winans over a period of a good many years, both secured and unsecured.

Q. What is the size of this loan that you made him without security since this complaint was filed?

A. I believe it is \$700.

Q. All of his other loans are secured?

A. That is right.

Q. Have the Winans borrowed extensively at times from the First National Bank, and in connection with what type of [1784] transactions?

A. Well, practically all of their logging operations have been financed by us over a period of the last 20 years, I should judge.

Mr. Krause: I think you may cross-examine.

Cross-Examination

By Mr. Ryan:

Q. I do not quite understand your reason for consolidating. Did you say you consolidated all of the outstanding loans? A. That is right.

Q. I do not quite understand your reasons for doing that.

A. They became due, and before we renewed them we required collateral to be put up before we would renew them.

Q. I am seeking the underlying reason why you required collateral. Would that be usual in your operations?

A. Not necessarily. We knew that Paul is possibly more or less, we might say, he is in a court action now and we didn't know what the outcome is

(Testimony of Percy F. Bucklin.)

going to be on this. We are merely playing safe like you would ordinarily do in a bank.

Q. In other words, it is your judgment that he might be subject to a lawsuit that influenced you to require security?

A. We don't take the chance on it if we can get out of it.

Mr. Ryan: No more questions. [1785]

Cross-Examination

By Mr. Jaureguy:

Q. I take it that would be true regardless of the nature of the lawsuit unless the loan would be protected by insurance or something of that kind?

A. That is right, regardless of how the suit might go, why, we would take all the precaution we possibly could in any event.

Q. You would request security in case of a possibility he might lose a lawsuit?

A. That is right.

Q. You do not take it upon yourself to investigate and see what the merits are? A. No.

Q. What did you get as security?

A. We have a Caterpillar tractor.

Q. A Caterpillar. Is it new or used?

A. Oh, I believe it is about two years old.

Q. How long back did this line of credit extend that you spoke of that you gave him and the rest of the Winans family?

A. Do you mean this last renewal, or credit?

(Testimony of Percy F. Bucklin.)

Q. No, I mean prior to the lawsuit you say that they had a line of credit for unsecured loans.

A. We never had a line of credit. We have made both Paul and his brother loans, possibly for the last 20 years in their logging operations for whatever they might require, for machinery, [1786] payroll, whatever necessary.

Q. Unsecured?

A. Partly unsecured, and the machinery, as a rule, was on a secured basis.

Q. What were the loans that were unsecured?

A. Oh, it varied; payroll, and possibly purchase of timber, and whatever their expenses were in their loading operations. That would vary, of course.

Q. That extended back for many years?

A. Well, since they have been in the logging business, Paul and his brothers, I think that is about 20 years, I believe.

Q. Well, now, in the fall of 1943, for instance, they got money on unsecured loans?

A. That I couldn't say without looking up the records. If they needed it at that time, they undoubtedly did.

Q. If they needed money in the fall of 1943, then you loaned it to them? A. Yes.

Q. Therefore, if they testified in this case that they needed money, why then, the answer is that they got money from the First National Bank?

A. Well, I believe we have loaned them money every time they required it.

(Testimony of Percy F. Bucklin.)

Q. The same thing would be true of the spring of 1944? A. Yes. [1787]

Q. In other words, right straight through, they could get whatever money they needed from the First National Bank?

A. Whether they got whatever they needed, I don't know, but we had always kept them supplied, I think, with whatever capital was required.

Q. Have you always loaned them what they asked for? A. Especially on equipment.

Q. Leave off equipment. A. All right.

Q. You mean on unsecured loans, have you always loaned them whatever they asked for?

A. Well, to my knowledge we have, yes. I was not making these loans in 1943 and 1944. I was not making loans to Paul at that time. I was in the bank, though.

Q. Did they always pay them when they became due at any time?

A. Not necessarily. We had to renew them from time to time a few times.

Q. Eventually they paid? A. Yes.

Mr. Jaureguy: That is all.

Mr. Strayer: No questions.

Mr. Ryan: No questions.

Mr. Krause: That is all, Mr. Bucklin, thank you.

(Witness excused.) [1788]

J. B. EDINGTON

a witness produced in behalf of the third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Edington, where do you live?

A. In Hood River.

Q. How long have you lived in Hood River?

A. 25 years or so.

Q. What business are you in?

A. Plumbing and heating.

Q. Have you had business dealings with some of the Winans in connection with your business?

A. Yes, I have.

Q. Were you engaged in doing any work for any of the Winans during the fall of 1951?

A. I think so.

Q. Did you read the articles in the Hood River Sun and the Hood River News regarding the filing of a suit for false and fraudulent representations?

Mr. Jaureguy: We renew the same objection we made to the similar questions on the last witness.

The Court: Objection overruled.

Mr. Ryan: We wish to make the same objection for the record on behalf of defendant [1789] Stegmann.

The Court: Is Stegmann being sued for defamation, too?

Mr. Krause: Well, your Honor, may I make a little more extended statement of this?

(Testimony of J. B. Edington.)

The Court: Well, I have overruled the objection, so go ahead.

Mr. Krause: Well, at any rate, they are both being sued.

Q. Did you read those articles?

Mr. Strayer: May I object here? I do not know what Mr. Krause is shooting at now, but at the appropriate time, of course, we are going to contend that there is no basis whatever for any counter-claim against Title and Trust Company.

May we have an objection running to all this testimony as far as our client is concerned?

The Court: Yes.

Q. (By Mr. Krause): Mr. Edington, did you read the articles in the newspaper reporting the filing of this lawsuit against the Winans by the Title and Trust Company? A. Yes, I did.

Q. In which they charged them with falsely representing that they were owners of some property and inducing a person to pay a large sum of money for it; do you recall that? A. Yes.

Q. Mr. Edington, did you in your dealings with other business people hear any discussion of this lawsuit that had been brought against the Winans, by the people up there in Hood River? [1790]

A. You mean any question as to his ability to pay his bills?

Q. Well, I will get to that in a moment. I didn't ask that.

A. I didn't get quite your question.

Q. Did you hear that discussed, the fact?

(Testimony of J. B. Edington.)

A. Oh, discussed, very much so.

Q. That this lawsuit had been brought. Did you frequently hear it from other people?

A. Very much so.

Q. Now, was there any discussion by those people as to whether Mr. Winans or the Winans would be able to continue to meet there obligations?

A. There was a question, yes.

Q. Did you have any difficulty in deciding for yourself whether they might have difficulty in paying your bills? A. I did.

Q. Did you change your method of doing business with them as a result of that lawsuit?

A. In one I did.

Q. In what respect did you change it?

A. Well, Mr. Winans was building two houses and he had one built and ready for another one, but he owed me money for the first one, some seventeen or eighteen hundred dollars. We was ready to go with the second one. I believe there was some preliminary work done on the second one, and before I went any further on the second one I told Mr. Winans I would have to have [1791] some money, and later on the news got around more about this suit deal, and I, like anyone else, was involved there for quite a little sum of money, for myself at least, and I began to wonder how good his credit was, how much I was going to get rooked, how I was out on a limb. That is all there was to it. That was my opinion on it.

Q. Had you had any discussions with Mr.

(Testimony of J. B. Edington.)

Winans about taking care of plumbing and heating work on a considerable number of houses that he intended building?

A. Well, not recently I haven't. I have before.

Q. No, I mean just prior to this time that this suit was filed? A. Yes, we had.

Q. And in which there were discussions that the building would be handled on a sort of a partnership basis between you and himself?

A. That is right.

Q. Did the filing of this suit against him have anything to do with your decision not to go in on the deal with him?

A. Well, the decision was made prior to this deal.

Q. Prior?

A. What you are asking me was made prior to the time even that the land was sold.

Q. Prior to the time that the land was sold and the suit was filed?

The Court: He made the decision to change his course of [1792] conduct?

Mr. Krause: Well, the previous question related to a tentative partnership deal between Mr. Edington and Mr. Winans on the completing of some houses, but he said that deal was off before the suit was filed.

You may cross-examine.

(Testimony of J. B. Edington.)

Cross-Examination

By Mr. Ryan:

Q. You say you required Mr. Winans to pay you some money on the \$1,700 he owed you on one of the houses before you would extend him any credit?

A. That is right.

Q. Did he pay you? A. Gave me \$500.

Q. Did you extend any further credit?

A. Yes, I did.

Q. To what amount?

A. Possibly five or six hundred dollars.

Q. Did you have any other security for that money?

A. No, other than I was extending my lien time, which was a benefit to me.

Q. Are you familiar with the houses where this plumbing was installed? A. I think so.

Q. Were you influenced in your fears about credit by any idea [1793] that these houses might not have been too easy to sell or to rent?

A. No.

Q. Have they been rented or sold?

A. I am not sure whether one of them has been sold. One is being finished right now. The other was sold. Whether it was sold before or after I don't know.

Q. How long a course of dealings have you had with Mr. Winans other than those you have described about the two houses?

A. How long has it been?

Q. Yes. A. Two years or so.

(Testimony of J. B. Edington.)

Q. Two years or so. Were there other houses?

A. No.

Q. That you supplied the plumbing?

A. No.

Q. It all relates to these two houses here?

A. That is right.

Q. Did you first supply plumbing and materials prior to the time this property was sold, or was this material all supplied after the property was sold?

A. Before it was sold.

Q. In giving credit to Mr. Winans and dealings with him, did you give any thought to his holdings of property at Lost Lake?

A. No, I would not say I did. [1794]

Q. Had he ever discussed it with you?

A. No, other than he had property, that was all. I didn't ask him where it was. In fact, I don't believe I knew it.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. What was this partnership deal that you mentioned in your direct examination?

A. That was possibly three years ago, some three years ago. Mr. Winans first had the idea of building a bunch of houses here. Being I was in a business somewhat related to construction, he wanted me to go in with him and build a bunch of houses up there, which at the moment I could not say. I did not think it was for me.

(Testimony of J. B. Edington.)

Q. Well, did you ever look favorably on it?

A. No.

Q. You did not look favorably on that at all?

A. No; no, never did.

Q. You did not go into it and then abandon it?

A. No.

Q. Why not. I mean, why didn't you go in with him on it?

A. I didn't think I could make some money on it. Unless I could make some money on it I was not interested.

Q. That is a pretty good answer.

Now, as I understand it, your change in your credit policy [1795] toward Mr. Winans was the result of the filing of this lawsuit?

A. That is right.

Q. If the paper had said merely that Mr. Winans had been sued in Portland for a hundred thousand dollars, you would have taken the same course; would you not? A. Possibly.

Q. If that is all the paper had said?

A. Possibly I would.

Q. In other words, you are like the witness before you, that if a man is involved in a lawsuit where he might get stuck, why that influences your credit policy toward him; is that about it?

A. I would think so.

Q. Yes, surely. That is all.

Mr. Buell: That is all.

(Testimony of J. B. Edington.)

Redirect Examination

By Mr. Krause:

Q. May I ask another question, Mr. Edington? Does it make any difference to you whether a man is just sued claiming that he owes some money or that he is being sued where they are charging him with fraud? If you are going to do business with him, does it——

A. I think there would be some difference there, yes.

Q. Which do you consider to be the, to have the greatest bearing upon your having business relations with another person?

Mr. Jaureguy: I object to that. We are talking about this [1796] man's relations and his conduct and his action.

The Court: Related to Mr. Winans.

Q. (By Mr. Krause): Well, you said that if it had just been a lawsuit against him, you might possibly have done the same thing. I mean about tightening up with respect to giving him credit. Did the fact that he was charged with fraud in this lawsuit have anything to do with your decision?

A. I would say perhaps some.

Mr. Krause: I think that is all.

Recross-Examination

By Mr. Jaureguy:

Q. Well, didn't the editor of this same article assure you that that fraud charge was false?

A. That is why you are having this trial, I think.

(Testimony of J. B. Edington.)

Q. That is correct.

A. I would not believe any editor or anybody else until a case like this was completed, until I saw the end of it. Does that answer your question?

Q. No, but I think it will do.

A. Well, then, good enough.

Cross-Examination

By Mr. Strayer:

Q. I want to know, Mr. Edington, when you read that article in the newspaper, did you believe that perhaps Mr. Winans was a swindler or a crook of some kind? [1797]

A. Well, there we go again to the previous question. Why believe what you read in a newspaper?

Q. Well, did you believe it?

A. Yes and no, not conclusively, no, I didn't.

Q. Did it create doubts in your mind; is that what you mean to say?

A. Well, regardless whether Mr. Winans, Mr. Jones, or Mr. Smith, I still would have disbelieved it.

Mr. Strayer: That is all.

Mr. Krause: That is all, Mr. Edington. Thank you.

(Witness excused.) [1798]

JOHN H. SHELDRAKE

a witness produced in behalf of third-party defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Judge Sheldrake, you live up in Hood River, do you? A. Yes, I do.

Q. You are the County Judge in Hood River County; are you not? A. Yes, I am.

Q. At the present time, how long have you been County Judge? A. Since January, 1936.

Q. Continuously?

A. No, excuse me, 1946.

Q. How many years have you known the Winans family? A. Oh, approximately 35 years.

Q. You are familiar with the Lost Lake territory up there, are you, in Hood River County?

A. I am very familiar.

Q. Is the Lost Lake area a matter of considerable interest to the people of Hood River County?

A. It is, very much.

Q. Why is that?

A. Recreational, it is the only fine recreation spot I believe we have in the county.

Q. When there are articles written in the newspapers relating [1799] to Lost Lake, is that a matter of interest to the people up there?

Mr. Jaureguy: I renew the same objection we had to similar questions.

(Testimony of John H. Sheldrake.)

The Court: I know, this is all going in under the objection.

Mr. Ryan: That applies to us, too.

The Court: Yes.

Q. (By Mr. Krause): Judge, could you tell us, do people read articles about Lost Lake in the newspapers in Hood River County?

A. Yes, they do.

Q. They do? A. They do.

Q. Now, do you know in general what businesses the Winans have been engaged in in Hood River County, particularly during the year 1951 and since that time? A. In the logging business.

Q. Well, is Paul Winans engaged in any other business besides the logging business?

A. They have a farm.

Q. Did you know that he was also building some houses up there, up there in the, what is it, the Purch Bowl area?

A. The Dee area, we call it.

Q. The Dee area.

A. He was building two houses, I know.

Q. Have you had business relations with the Winans in the past? [1800]

A. Doing my work in the county and Hood River for about 30 years, I have had many contacts with Paul Winans and the Winans family.

Q. Do the Winans in their logging operations have occasion to do business with the County of Hood River, too, and with the County Court?

A. With County Court, we occasionally issue

(Testimony of John H. Sheldrake.)

what is known as logging haul permits over county roads.

Q. Those things have to do with the maintenance and repair of county roads, too, do they?

A. That is right.

Q. Did you read the articles in the Hood River papers relating to filing of this suit by the Title and Trust Company charging the Winans with fraud and misrepresentation in connection with the sale of the Lost Lake property? A. I did.

Q. You read those articles. Did you hear them discussed, these articles and the charges against the Winans by people in Hood River?

A. Yes, I heard that.

Q. Was it a matter of common discussion, or what would you say about that?

A. It was quite common discussion.

Q. Did you hear views expressed regarding whether they believed these articles or disbelieved them? [1801]

Mr. Jauregui: The further ground, it is hearsay.

The Court: Objection overruled.

The Witness: Would you repeat that again, please?

Q. (By Mr. Krause): Did you hear any of these people in discussing these charges express any opinions as to whether they considered them true or not true, or whether they did not know what to believe?

(Testimony of John H. Sheldrake.)

A. I heard numerous discussions. Some discussions they thought they were true.

Q. Any other people express any other views?

A. Other people like myself probably didn't pass an opinion. I didn't myself.

Q. Were you familiar with the reputation that the Winans brothers had for honesty and integrity in Hood River, say, during the year 1951 and prior to that?

A. In my dealings with the Winans, I have not——

Q. I am not talking about your personal dealings with them now, Judge. Do you know what their reputation was for business honesty and integrity?

A. So far as I know, it was good, their reputation.

Q. First I wanted you to say whether you did or didn't know, you see, and then—you do know what their reputation was?

Mr. Jaureguy: Objected to as a leading question.

The Court: The first question is, do you know what the reputation in the community was. The Winans family lived in Hood [1802] River County for a long time, didn't they?

The Witness: Their reputation is good. Does that answer it?

The Court: How do you account for the fact that so many people believed the statement in the newspaper, then?

(Testimony of John H. Sheldrake.)

The Witness: I cannot go into other people's minds.

The Court: Did some people in their conversations say that they felt that Paul Winans was the type of man that could perpetrate a fraud?

The Witness: I think I have heard those remarks.

Mr. Krause: I think that is all. You may cross-examine.

Mr. Ryan: I have no questions.

Cross-Examination

By Mr. Jaureguy:

Q. Now, you have heard remarks in Hood River County, as I understand it, that Paul Winans is the type of man that would perpetrate this kind of a fraud? A. I have heard those remarks.

Q. Yes, but still you say that prior to this event they had a good reputation in Hood River County?

A. I would say so.

Q. Can you give us an estimate as to how many people you have talked to about the—prior to this event, about Paul Winans, what kind of a——

A. How many, no, I couldn't tell you how [1803] many.

Q. Would you say as many as five?

A. Oh, more than that.

Q. How many, of what proportion of those before 1951 remarked that they didn't think he was such a good man from the standpoint of honesty and

(Testimony of John H. Sheldrake.)

integrity? A. Would you repeat that?

Q. You say prior to this event you talked to several people about Paul Winans?

A. They talked to me, yes.

Q. And they talked to you, and what proportion of them thought that he was not quite on a par with the general run of people there as far as honesty and integrity was concerned?

A. Before this?

Q. Yes. A. I couldn't tell you.

Q. Would you say as many as a third of them?

A. No.

Q. More or less? A. Less.

Q. Less. Well, how many people since this happened have you heard say that they thought he was the type of man that would do this which was reported in the paper? A. How many?

Q. Yes. A. I couldn't tell you. [1804]

Q. Were there as many as a dozen?

A. Perhaps.

Q. Would you say there might have been as many as twenty? A. Perhaps.

Q. Could there have been as many as fifty?

A. I doubt it.

Q. You doubt it, so that when we get up to fifty, why, that is just a possibility; you do not think so; you doubt it. Would that be a fair statement? I don't want to put words in your mouth, you understand, Judge. You doubt that there were as many as fifty expressed the view that he was the

(Testimony of John H. Sheldrake.)

type of man that would do what was reported he had done in the paper?

A. I doubt if it is fifty.

Q. Now, as I recall the first item in the paper at the time mostly expressed the belief that this charge was not true; do you remember that?

A. At the time, no, I don't.

Q. Beg your pardon?

A. I don't remember that.

Q. Do you remember what was in the paper?

A. Not exactly because although I read it, I had much other things to read and I don't pretend to remember a whole case that I read in the paper.

Q. I take it you do remember that the papers said he was made a party defendant in a lawsuit in the Federal Court in Portland? [1805]

A. That is right.

Q. And that it had some connection with the Lost Lake deal?

A. That is right.

Q. Aside from that you don't recall what was in it?

A. I could not state just what was in the paper.

Mr. Jaureguy: All right, thank you very much.

Mr. Buell: No questions.

Examination by the Court

Q. Did the county treat Mr. Winans any differently after the story occurred in the newspaper than they did prior to that time, with reference to permits for the use of the roads for logging purposes or anything else?

(Testimony of John H. Sheldrake.)

A. I would not say for sure that we have issued any permits since that time, for sure.

Q. The probabilities are if he asked for a permit he would get one anyway? A. I think so.

Q. Prior to the time that this story came out, do you know of anyone who made critical remarks about Mr. Winans? Mr. Jaureguy had asked of possibly one-third of the people at that time with whom you had talked made critical remarks, and I am asking you if you know of anyone who made critical remarks? A. I remember one.

Q. Just one?

A. I would not like to state the name, but I remember one. [1806]

Mr. Jaureguy: I would like to ask a question.

Q. If you cannot tell us, can you actually remember some that had occasion to tell you what a good, honest man he is, or was?

A. Had occasion to tell what a good, honest man he was?

Q. Yes, to tell you that——

A. I can't remember right now.

Q. You can remember that one was critical of him, and you cannot remember any that were actually laudatory or commendatory in their remarks?

A. Right off the bat I can't tell you.

Mr. Jaureguy: All right. Thank you.

The Court: Any other questions?

That is all, Judge.

(Witness excused.)

Mr. Krause: Your Honor, may I offer this 319? That is a carbon copy of a letter identified by Mr. Bucklin. Might I offer this so I don't forget it.

The Court: All right. Any objection?

Mr. Jaureguy: I think it is already in.

Mr. Krause: No, it was not in.

Mr. Jaureguy: The original is in but not the carbon.

Mr. Krause: The original was not produced. We asked you to produce it and you said you would agree that we could put a copy in.

The Court: All right, it is in now. [1807]

(Document, carbon copy of letter to First National Bank of McMinnville, McMinnville, Oregon, from P. F. Bucklin, dated August 10, 1951, previously marked Third-Party Defendant's Exhibit 319 for identification, was received in evidence.)

(Discussion off the record.)

The Court: In any event, it is admitted now.

(After further discussion off the record, the trial was adjourned to Wednesday, February 11, 1953, at 9:30 a.m.) [1808]

February 11, 1953, 9:30 A.M.

The Court: Mr. Krause, you may proceed.

Mr. Krause: Call Mr. Paul Winans.

PAUL WINANS

recalled in his own behalf and in behalf of the Third-Party defendants, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Winans, do you recall a meeting with Mr. Stegmann on the day prior to the execution of the option? A. I do.

Q. Where did you have that meeting?

A. That took place in my own home.

Q. When, with respect to the date on which the option was signed, did you and Mr. Stegmann come to an agreement as to the price that was to be paid?

A. I place that as on or about August 1, 1951.

Q. Well, at that time did you have an agreement as to the entire property, or just a part of it, any part of it? A. I didn't get that last.

Q. Did you have an agreement then for the both parcels or just one parcel? [1809]

A. Both parcels, tentative agreement.

Q. Why had there been that delay between about the first of August and the 11th of August?

A. The understanding was when we reached a tentative agreement that first I would refer the same proposition to Mr. Linville and his clients

(Testimony of Paul Winans.)

due to the priority which they held in the deal, and that Stegmann would see somebody else. He would talk it over with his wife, he said, and he would come to a conclusion, and he was to get in contact again in one week from date and let me know what his decision was, and I would have mine.

Q. During that intervening period did you discuss the matter with the other people that were interested in this, that is, your brothers and sisters?

A. You mean my brothers and sisters?

Q. Yes.

A. Oh, yes, I kept them constantly advised of all the developments at all times.

Q. Now, during the summer of 1951 I think that is as closely as the date was fixed, Bert Holtby, one of the forest rangers, testified to receiving a telephone call from you.

A. That was right. I called him.

Q. In regard to the property. Did you make such a call to him? A. I did.

Q. What was the purpose of the call?

A. Well, the purpose was more, I believe, to keep a commitment [1810] that I had always extended to the Forest Service that I would prefer to see them in possession of our property than any private individual due to the fact that they would retain the lake area, the natural beauty of Lost Lake intact.

Q. Did any negotiations develop with the Forest Service at that time regarding a sale or an exchange?

(Testimony of Paul Winans.)

A. No, none at all. It was sort of left open. He said he would be interested, and I think that with the other events crowding up as it did that I didn't go back to him on it. In fact, I had no confidence that anything would result of it. It was simply a gesture to keep the commitment that I had made.

Q. On the day before the option was signed, you say—oh, you have already testified as to the other matters in between those two dates when you were on the witness stand before, but on the day before signing the option you had a meeting with Stegmann? A. Yes.

Q. What did you do at that time?

A. Well, he had been trying to locate me in Hood River. My sister had informed me so by telephone. I returned home. I scouted around a little around town to see if I could contact him, failed to do it, and I returned home. While I was eating supper, as we recall it, Stegmann drove in, came into the house.

Q. What did you do that evening with him?

A. Well, there was some general conversation, and then I believe, as I recall it, Mr. Stegmann asked me what our decision [1811] was in the matter, and I told him that contingent on all details being worked out satisfactorily that we felt that we could give him the deal.

Q. On the following morning, did you and Mr. Stegmann and your sister Ethel have a meeting?

A. We did.

Q. Where did that take place?

(Testimony of Paul Winans.)

A. That occurred in the old family home where my brother and sister reside.

Q. Was that prior to the time that the option was signed? A. It was.

Q. And your sister's home is right in that same vicinity where your office was, and your own home?

A. Oh, yes, I was working over there at the service station. I have a desk there. I never in my own mind have referred to it as an office, but I did have a desk there, and attended to some of the customers that came into the station and did my work at that place, and we had been working there. The distance over to the old family home where my father and mother lived is less than 200 feet.

Q. You and Mr. Stegmann went over there to Ethel's home? A. Yes, we did.

Q. What was the purpose of this call that you were making on Ethel?

A. Well, this was coming down to closing the deal. I had told [1812] my sister so, and I wanted her to know the full details of what we were doing.

Q. In giving her the details, what information did you give her? First, what was said by you?

A. Well, I recited to her the framework of the deal. I told her that we were selling, or agreeing to sell, under this option to our property in Lot 1, less a reservation of the acreage which has been mentioned so often, 8.88 acres, and for \$80,000 and that we were including along with Lot 1 the forty acres as commonly referred to as the back forty, or right

(Testimony of Paul Winans.)

or interest in it, whatever we had in it we were including, an additional price of \$20,000, total \$100,000.

Q. Did Mr. Stegmann have anything to say, or did he make any remarks about this transaction?

A. No, characteristically, he made no comment.

Q. What did you do after that?

A. Went back to the desk and proceeded to write up and complete the option.

Q. Which you finished some time after lunch, then?

A. Well, I believe it was. I am rather inclined to think that I had it done before lunch, but I think my lunch was held a little bit late because I invited Mr. Stegmann to lunch with me. I might say that the wife had prepared lunches that we were to take to Lost Lake with us, but instead of that we ate at home.

Q. How many times did you see Chet Parker between the date of [1813] the signing of the option and the delivery of the deed to Mr. Abraham in Vawter Parker's office?

A. Three times, as we have it, approximately August 27th, August 30th and, then, I think, just following Labor Day, somewhere around possibly Labor Day or the day following, which would be around the 3rd, I think, of September, 1951.

Q. The first time you saw him did you meet him, too? Were you introduced to him?

A. To Chet Parker?

Q. Yes. A. That is right.

(Testimony of Paul Winans.)

Q. On this first occasion when you saw him, can you tell us what sort of clothes he was wearing?

A. I clearly remember that, some detail of that.

Q. How would you describe his clothes, the type of clothing and color?

A. He was wearing one of these standard cruiser's coats, they call it, green color.

Q. What other clothes?

A. I don't like to go into detail as to what kind of trousers or foot gear he was wearing, but I quite clearly remember that he was wearing what I would call a cloth, water-repellant hat, green, also, I believe a lighter shade than the coat that he wore.

Q. On this first occasion that you met him, it was just meeting him down at your own place? [1814]

A. In the service station.

Q. In the service station? A. Right.

Q. There has been some testimony here that they wanted to take you along, but you were too busy with other things.

A. Exactly to the contrariwise.

Q. What happened with respect to your going or not going with them on that occasion?

A. Well, the procedure was that Walt Stegmann brought him into the service station and introduced him as Mr. Chet Parker and as a surveyor that he had previously asked if he could bring with him to complete the survey. I happened to be working on a map which was an outline of—since we had failed to get anywhere with Stegmann on the job the previous Sunday—yes, Sunday is right—and I had

(Testimony of Paul Winans.)

worked up an enlargement off of a Metsker map, setting it out so that I could set out in particular details suggested apportionment of property, that is, on this 8.88 acres, and as he came in I was working on that, and immediately seeing that he was a surveyor, I showed him what it was, and Mr. Parker examined my work with what I would say an attitude of professional interest. He knew what it was all about.

Q. Of course, what I was asking about particularly, though, was how did it happen that you did not go up to the lake with them? [1815]

A. Well, I am right up to that. After this had gone on a little while, I said—I supposed I was going up with them. That was the understanding with Stegmann. I said, “Well, let’s get going and get up there.” Stegmann vigorously objected. He said no, no, he said, that with his help and the help of Mr. Parker’s boy who was outside in the car, that it would be all they needed, and they could take care of it all right. I didn’t like the idea very well, but I did agree to it and with the proviso that if their work was satisfactory it would be acceptable, otherwise not; that I reserved the privilege of bringing back surveyors I had had on the job before.

Q. When you were introduced to Chet L. Parker you had seen the name before; had you not?

A. I had seen it, yes, that is right.

Q. Where had you seen his name?

A. Well, I had made inquiries though the First

(Testimony of Paul Winans.)

National Bank directly with Mr. Bucklin, who testified here yesterday, and he had for us a report from the bank referring him to Chet L. Parker of Vancouver, Washington.

Q. Were you advised of that by Mr. Bucklin?

A. Yes, he told me that. Then when I was in there a day or two later he had a letter from Chet L. Parker vouching for Mr. Stegmann's financial responsibility and ability to carry through an \$80,000 transaction.

Q. The next occasion upon which you saw Mr. Parker was on the [1816] surveying trip, and that has been told about here in great detail?

A. On or about August 30th with a variation of a day or so one way or the other.

Q. I wanted before getting to that to have you look at that map again that is in evidence, 303.

(Exhibit tendered to witness.)

That map, as you testified here, was prepared at Mr. Parker's request by an engineer by the name of St. Louis, or a surveyor?

A. I have learned that since.

Q. I beg your pardon?

A. I have learned that since.

Q. That appeared here in the case, and upon notes that had been furnished to him by Mr. Stegmann?

A. That is what Mr. St. Louis told me.

Q. How were all of these lots, that is, there are

(Testimony of Paul Winans.)

quite a number of separate lots drawn on that Exhibit 303?

A. Well, truly, I do not have first-hand knowledge about that. I can only surmise.

Q. We do not want your surmises exactly, Paul. What I want to know is, was there any discussion between you and Stegmann regarding laying out any lots on the waterfront?

A. None whatever.

Q. As far as this reserved area was concerned, was that to be finally in one piece, or was it to be a number of lots?

A. No, it was not. There was a complete understanding between [1817] Stegmann and myself in closing the option that we were to reserve approximately one acre in the extreme northeastern part of Lot 1 right on the Lost Lake waterfront.

Q. What was the nature of the waterfront there on the northeast corner?

A. It was dry land, nicely wooded, very beautiful.

Q. At any rate, it was not swampy?

A. Oh, no, indeed.

Q. On the northwest corner of this Lot 1, what was the nature of the ground there?

A. Well, it is practically all swamp, marshy ground, some fairly firm ground. That applies to practically all that south, southern part of Lot 1.

Q. Where you finally got the reserved area was in that southeast portion, including the swampy ground?

(Testimony of Paul Winans.)

A. North—or rather—yes, south—southwest.

Q. Southwest corner?

A. Well, better to say south because it does take all that south section of Lot 1.

Q. When this map, 303, was presented to you by Mr. Stegmann, was there any conversation with him regarding the occasion for setting out the separate lots on the waterfront?

A. As shown on this map?

Q. Yes, did Mr. Stegmann say anything about that? A. No, nothing at all. [1818]

Q. Were you told by him as to what lines there would indicate the reserved area?

A. Well, he said that they would have to have all of that waterfront for quite a distance southwesterly on the lake shore, including the acre that we wanted to reserve in that portion.

Q. That you were not to get that acre?

A. No, he said he would have to have that. He said that is right where his wife wanted to build her house, right where we wanted to reserve this acre.

Q. Of course, a quarter of a quarter section is 1,320 feet on a side, isn't it?

A. North and south.

Q. Well, or east and west.

A. You mean this meandered?

Q. No, no, I am talking about a quarter of a quarter section.

A. Oh, yes, indeed, it should be 1,320 feet. Lots of times it varies.

(Testimony of Paul Winans.)

Q. However, is the waterfront there on Lot 1 only 1,320 feet in extent?

A. No, the lake frontage is crescent-shaped, and it will run nearer 1,500, estimated.

Q. When the final reservation was made of the property that you were to have, approximately how many feet of waterfront was in your reservation, and about how many feet were left?

A. Well, 900 approximately in our reservation, and 600, according [1819] to the description in the deed, more or less, went to Stegmann.

Q. Your final sale price was \$95,250?

A. That is right.

Q. Although the option called for \$100,000?

A. That is right.

Q. What was that reduction in the price for?

A. We kept approximately a little over, I believe, one and a half acres of ground additional to the 8 and fraction acres, running it to something over 10, 10 and a half, approximately.

Q. With whom did you compute how much of an allowance was, how much of a deduction was to be taken off of the purchase price?

A. I did, together with Walter Stegmann.

Q. How did you determine what method to use in fixing the value on the additional acre and a half that you were retaining?

A. Well, the approximate area had been determined on by Mr. Haynes, had computed it, and Stegmann said that he was agreeable to setting out

(Testimony of Paul Winans.)

the additional reservation in the deed, but he wanted as much money per acre as he paid for it per acre. Then on that basis we set up \$80,000 which was the consideration for Lot 1, divided it by approximately 25 acres, which resulted in the approximate figure of \$3,000 per acre.

Q. That is the way you arrived at your value?

A. That is right.

Q. But actually Stegmann was paying more, was paying \$80,000 for less than 25—— [1820]

A. Yes, I think that went over our heads at the time, both of us, because I didn't think of it and Stegmann certainly didn't raise the point, but, actually, it should have been 17 acres at \$80,000.

Q. Now, was there any other besides this approximately acre and a half that would have come, too—but the price was reduced \$4,750. Was there any other negotiations with Mr. Stegmann that covered that \$250?

A. Yes, there was another one of these areas that they had that Stegmann had marked out on this map.

Q. Let us get this straight, Paul. You say, "on this map." Now, that was an earlier map?

A. Yes, well——

Q. There is testimony about a later map. Which one was it?

A. Correct that this way. I think it showed on both maps. This was on the other one, the one that Stegmann presented on August 30th.

Q. Yes?

(Testimony of Paul Winans.)

A. Instead of cutting over an angle toward the east, that was straightened up and I think continued due south, which left a small area there that Stegman always won't pay for, so we allotted \$250 for that, setting a figure of \$4,750.

Q. That \$250, it was adjusted between you and Stegmann? A. That is right.

Q. I will just ask you generally, did you ever discuss what [1821] allowance was going to be made on the purchase price because of your additional reservation of property to yourselves, with Mr. Parker? A. Mr. Parker, none.

Mr. Strayer: Chet Parker or Vawter Parker?

Mr. Krause: Well, of course, I mean Chet Parker, not Vawter Parker.

Now that that comes up, did Vawter Parker have anything to do with the computing, with the three thousand—I mean, the price for the adjustment?

A. No, as I recall it, that was done by Stegmann and myself, and the results was passed on to Vawter Parker.

Q. Where was it done?

A. In Vawter Parker's office.

Q. Do you recall whether Vawter Parker was there at the time that you were making the computations? A. I know that he was.

Q. Was Mr. Haynes there at that time, too?

A. He certainly was.

The Court: We will take a short recess.

(Recess taken.)

(Testimony of Paul Winans.)

Q. (By Mr. Krause): I would like to direct your attention, Mr. Winans, to that document that you presented to Mr. Stegmann to sign in Mr. Vawter Parker's office. A. Yes. [1822]

Q. That is Exhibit 311. Would you like to see it?

A. I would like to see that.

Q. Could we have it for the witness, please?

(Exhibit tendered to witness.)

What is your best recollection as to which day it was that this was presented to Mr. Stegmann?

A. September 8, 1951.

Q. That is on a Saturday?

A. That is right.

Q. The first of two days in which you were in Mr. Vawter Parker's office?

A. That is right.

Q. What did Mr. Stegmann say when you handed it to him—well, what did he do with it first of all when you handed it to him?

A. I would like to just look it over for a moment as I have not seen it for quite some time.

Oh, this was following a line of sequence that I had planned in advance that when the reserved area was finally set out, it was time to set up some form of record that an agreement had been reached. That is covered in the first paragraph.

The second paragraph I set out that the deed of conveyance was to be delivered subject, "to any and all alleged claim or claims of the United States Government running against the northeast quarter

(Testimony of Paul Winans.)

of the northwest quarter, Section 16, Township 1 South, Range 8 East, conveying from the said Ethel Winans to the [1823] said Walter Stegmann, on or before one week after date hereof."

That was referring to the option.

Q. Now, did you hand that paper to Mr. Stegmann?

A. Yes, I handed it to him directly.

Q. What did Mr. Stegmann do?

A. Oh, he took more time than I have here to mull over it and think over it and finally said, "No, I don't think I would go for that." He said, "That would be the same as my admitting that I knew the title to that back forty was no good." He refused to sign it.

Q. At that time, besides yourself and Stegmann, there were who present?

A. Mr. Haynes and Mr. Parker.

Mr. Jaureguy: Mr. Vawter Parker?

Q. (By Mr. Krause): Vawter Parker?

A. Vawter Parker, correct.

Q. Let me ask you this. Before submitting that memorandum, Exhibit 303, to Stegmann, had there been——

A. This is 311, I think.

Q. 311, pardon me, yes, 311—to Mr. Stegmann, had there been any discussion about the title to the forty acres? I mean just on that day?

A. On that day, oh, yes. That was a joker throughout the day there.

Q. You have told us before just what you did

(Testimony of Paul Winans.)

discuss about? [1824] A. Oh, yes.

Q. That is, the Government's claim and the necessity of an Act of Congress?

A. That is right.

Q. Could I have Exhibit 315, please? Pardon me, that has not been introduced. Would you hand that to the witness, please?

(Document tendered to witness.)

What is Exhibit 315?

A. An abstract of title, Caption Number 616.

Q. What property does it cover?

A. That covers the 65.88 acres in the Winans name.

Q. That is those Lots 1 and 2 that we are talking about? A. That is right.

Q. What was that abstract prepared for, that is, why had it been prepared?

A. That was prepared for, to be submitted in connection with a loan that we were negotiating through Mr. A. B. Combs, an insurance agency in Portland.

Q. Who was the attorney representing Mr. Combs?

A. Senator Frank H. Hilton, not then senator.

Q. This abstract—there is also an extension of that abstract that you have there?

A. That is right.

Q. That is under the same number. What was the date of the preparation of the first abstract? [1825] A. I know it was——

Q. On the last——

(Testimony of Paul Winans.)

A. I know it was twenty-three.

Q. It is on the last page of the first——

A. Last page 23.

Q. Of the first part of it.

A. This is a certificate. Do we find it on that, or don't we?

Q. Ought to be on—what is the date of the certificate?

A. Fourth day of October, 1938. That would be about right.

Q. Did you get a loan from Mr. Combs at about that time?

A. No, not a new loan. It was a renewal of a part of the original loan.

Q. It was a renewal? A. That is right.

Q. And it was secured by a mortgage on this property? A. A new mortgage, yes.

Q. Now, then, there was an extension. What is the date of the certificate on the extension on the abstract?

A. Date of the extension, I don't know just where to find that.

Q. Again on the very back page.

A. Very last page?

Q. Yes.

A. It covers the period from July 20, 1925, to October 4, 1938.

Mr. Jaureguy: Oh, no.

Mr. Lindsay: Look on the very back page. [1826]

The Court: Why don't you show it to him?

The Witness: The original, yes——

(Testimony of Paul Winans.)

Mr. Krause: Well, the original, we have covered that. Now we want the extension.

A. Oh, yes, the extension, pardon me. The extension is the fourth day of October, 1938.

Q. You are still on the original abstract. Now, here is the extension. A. Oh, yes, pardon me.

Q. The last page of the extension is April 16, 1946; is that right?

Mr. Jaureguy: Did you say April?

Mr. Krause: April 16, 1946, is the date?

A. Well, as to that extension, I don't know anything about it. That was done, I think, through Mr. Hilton's office.

Q. Well, the abstract says that it was prepared at Mr. Hilton's request.

A. Yes, brought down to date of that transaction; however, that was done through their office and not referred to me.

Q. I see, you had nothing to do with getting an extension?

A. No, so far as I know, it was up to that 1938 date. That is the first time I think that has ever been called to my attention that it had been extended to 1946.

Q. Was that in connection with another loan on the property that the extension was obtained? Or a renewal of a loan already [1827] on there, or can you tell us about that?

A. No, there was no renewal or anything like

(Testimony of Paul Winans.)

that. I think perhaps I have mentioned before that our family figures that we had this mortgage clear, paid out in 1943, 1944, and Mr. Hilton was bringing a foreclosure on it, and he probably brought that up to date in preparation for some court action.

Q. There was no such court action instituted, however? A. No.

Mr. Jaureguy: You said there was not?

Mr. Krause: No.

The Witness: They might have filed a suit, but it was never completed.

Q. (By Mr. Krause): Well, were you served with papers? A. Yes.

Q. You were?

A. I will correct myself there, yes.

Mr. Jaureguy: My mistake, it was not instituted. It was just filed.

Q. (By Mr. Krause): However, the Combs mortgage was one that you paid off at the time that this deal was closed?

A. Yes, we settled for a full sum of a hundred dollars.

Q. Besides having Mr. Bucklin make inquiries concerning Walter Stegmann's financial ability, did you inquire of anyone else to ascertain anything about his financial ability?

A. I did through several sources. [1828]

Q. Well, did you ask George M. Bracker of the Bracker Timber Company for information concerning him?

A. I believe that I wrote a letter to Mr. Bracker.

(Testimony of Paul Winans.)

Mr. Krause: I would like to have you examine Exhibit 301.

(Exhibit tendered to witness.)

Will you also hand him 302, please.

(Exhibit 302 handed to witness.)

Q. Is that Exhibit 301 a carbon of your letter addressed to Mr. Bracker? A. It is.

Q. What was the date of it?

A. August 2, 1951.

Q. Was that about the date on which you wrote a letter and sent it off to Mr. Bracker?

A. Oh, yes, I think it would be about even date.

Q. That date? A. Right.

Q. Did you get a reply from Mr. Bracker?

A. I am sure that I did.

Q. Is that the Exhibit that you have there, 302?

A. Yes.

Q. What is the date of Mr. Bracker's letter to you? A. August 3, 1951.

Q. About when did you receive that letter?

A. Oh, I should have received it on August 4th, mailed the 3rd. [1829]

Q. Do you recall whether you received it about that date? A. Oh, I am sure of it.

Q. Prior to the time that the option was signed?

A. Definitely so.

Mr. Krause: I would like to have in evidence 301 and 302. Would you show them to counsel, please, and also 315, the abstract and the extension.

(Testimony of Paul Winans.)

Mr. Buell: On the abstract, we have no objection to it, but I think the record should show at the time it goes in that it was not prepared by the Title and Trust Company.

Mr. Krause: Well, it was prepared by the Hood River Abstract and Title Company, and we will stipulate that it was not the Title and Trust Company.

Mr. Jaureguy: No objection from us on any ground.

* * *

The Court: I will sustain the objection. 315 is admitted, but the two letters are rejected.

(Document, abstract of title Number 616 from the office of Oregon Abstract Company, Hood River, Oregon, previously marked Third-Party Defendants' Exhibit 315 for identification, was received in evidence.) [1831]

(Documents previously marked Exhibits 301 and 302 rejected.)

Q. (By Mr. Krause): The deed was delivered on the 11th of September to Mr. Abraham, the deed conveying this property? A. Yes.

Q. When did you learn whose name had been inserted in the deed as the grantee?

A. Very shortly following the delivery of the deed to Mr. Abraham.

Q. Well, was it the same day?

A. Oh, yes, within half an hour, I would say.

Q. From whom did you get the information?

(Testimony of Paul Winans.)

A. Through Vawter Parker who responded to a telephone call.

Q. You were still in Mr. Parker's office?

A. Yes, I was.

Q. Did you have any idea of anyone having obtained title insurance on the forty acres——

A. None whatever.

Q. ——up to the time that you delivered the deed? A. Not at all.

Q. Now, had there been any conversation with Mr. Stegmann or Mr. Parker that you participated in or overheard where there was any reference to title insurance or—— A. Nothing whatever.

Q. ——or the forty acres [1832]

A. Nothing whatsoever.

Q. Was there any reference to title insurance for any part of the property?

A. You mean more than secured by Mr. Stegmann?

Q. Well, was there anything said about anybody obtaining title insurance on the property that you transferred at that time?

A. No, not that anyone obtained, not whatever.

Q. Ordinarily, the seller furnishes either an abstract or title insurance?

A. That has been my experience.

Q. Why didn't you furnish either an abstract or title insurance?

A. I was not asked to furnish it by anyone. I didn't feel myself obligated to, and I would not have attempted to furnish it showing clear title.

(Testimony of Paul Winans.)

Q. On either one of the lots?

A. Oh, I would have an abstract, but I would not have gone for title insurance.

Q. As far as Lot 2 was concerned, and as far as you know up to now, that was insurable, too, wasn't it?

A. Right.

Q. Lot 1—I mean Lot 1. A. Pardon?

Q. Lot 1? A. Lot 1?

Q. Yes. [1833]

A. We had the remainder of the original title insurance policy as per the endorsement on the policy itself remaining on Lot 1, and that I expected to deliver to the purchasers or submit to them.

Q. But no one ever asked you to furnish any title insurance? A. No, none whatever.

Q. When did you learn following the delivery of the deed that a dispute had arisen regarding the ownership to the forty acres?

A. I think the first information that came to me was through the press.

Q. By the press, are you referring to the Hood River press? A. Yes.

Q. Hood River papers in Hood River?

A. Hood River Sun and Hood River News.

Q. Did the Title and Trust Company at any time, or anyone representing them or claiming to represent them, ever interview you regarding this transaction? A. They did not.

Q. Prior to the institution of the suit?

A. They did not.

(Testimony of Paul Winans.)

Q. Do you know whether any of the other members of your family were interviewed by anyone connected with the transaction?

A. I know that they were not.

Q. So what was your first knowledge that you were going to be involved in a lawsuit; how did you obtain that? [1834]

A. When the complaint was served on us.

Q. After the complaint had been filed here, was it recorded in the Hood River newspapers?

A. Yes, that was simply a suggestion, though, that it might happen.

Q. At any rate, the—your first definite knowledge that you were to be included in the suit came from the papers that were served on you?

A. Right.

Q. How long have you lived up in Hood River County, Mr. Winans? A. 65 years.

Q. Did the people in Hood River County, were they interested in the Lost Lake area?

A. Very much so.

Q. Was it a matter that people read with interest whenever there were any discussions regarding—

The Court: That is merely cumulative, and you have had three witnesses testify to the same thing, Mr. Krause.

(Testimony of Paul Winans.)

Mr. Krause: Yes, I would like to hand the witness Exhibits 323 and 324, 15-A, 15-B, 15-C, 15-D and 325, and ask him whether those were clippings that he took out of the Hood River Sun and the Hood River News that dealt with the sale of the Lost Lake property.

(Documents referred to tendered to the witness.)

The Court: Have all the attorneys seen those clippings? [1835]

* * *

The Court: As I understand Mr. Krause's theory, it is that the Title and Trust Company did not file the action in good faith, and these articles are being introduced for the purpose of showing the damage; is that correct?

Mr. Krause: Correct; that is right, your Honor.

Of course, I just want to say at this time that good faith involves also the extent of your knowledge, and I do not like to just rest it on the statement of the Court that it is based on a lack of good faith.

The Court: Or it is reckless?

Mr. Krause: Reckless, a reckless disregard of our rights when they charged us with fraud without having any reason or basis for doing so. That is a lack of good faith.

The Court: Proceed. [1837]

* * *

(Testimony of Paul Winans.)

Q. Following the publication of the filing of this complaint against you, Mr. Winans, did people in Hood River County question you about the complaint?

A. Yes, they began asking—about the complaint, you say, following the filing of the complaint?

Q. Yes, after it was reported in the papers up there that the complaint had been filed against you, were you stopped by people and they inquired about the complaint? A. Many times.

Q. Did they discuss with you the nature of the charges that had been filed against you?

A. They were curious about them, yes.

Q. Did they ask you to explain them?

A. Some of them did.

Q. Was that a matter that just occurred a few times, Mr. Winans, or how many, would you tell us?

A. Well, I would think it occurred continuously over a long period.

Q. Can you give us roughly the number of people that have asked you about this complaint that was filed against you and your sisters and [1840] brothers?

A. That would be, I would say, a matter of estimate, but all told I would imagine as many as a hundred.

Q. Was it a matter of any embarrassment to you to be charged with fraud? A. Yes, quite.

Q. Did it have any effect upon your own business operations?

(Testimony of Paul Winans.)

A. I am quite sure that it did.

Q. Can you be a little more specific? What was the nature of the business that you were engaged in, first of all?

A. Oh, personally, perhaps the most outstanding one at that time was the building of a couple houses I had and the development of, generally, the area of the land on which they were situated. And then I had other interests, of course. I have associated with my brother in the logging operation, and I am interested in a ranch.

Q. Tell us just how the filing of this complaint charging you with fraud interfered with your carrying on of your business that you had theretofore?

A. I have experienced a general all-around tightening of credit.

Q. Did you borrow money from the First National Bank of Hood River? A. I did.

Q. What developed with respect to their extending credit to you? [1841]

A. Finally resulted in what had been current loans, open loans, were placed on a security basis at the desire of the bank.

Q. At the request of the bank?

A. That is right.

Q. With respect to your employment of subcontractors or people working on your houses, did you have any difficulty regarding your credit with them?

A. Decidedly so.

Q. How, in particular?

(Testimony of Paul Winans.)

A. I could name several. There is Tumalum Lumber Company, Carl Krieg, Eddington Plumbing and Electric Company, for three.

Q. Had you any other plans under way for financing your, this development of property that you have at Dee that were under way prior to the filing of this complaint? A. Yes, I did.

Q. With whom were you discussing the financing?

A. Well, there were a number that I approached in the matter, but ordinarily I would have had no trouble getting money from, but I was turned down, those sources, and one in particular with a Mr. Nichols in Hood River that was very interested in the project, and when this came up, why, he frankly said that he could not go any further now.

Q. Was Mr. Nichols a man who had large sums available to you for investment?

A. Yes. [1842]

Mr. Ryan: Your Honor, I object to this evidence with respect to what Mr. Nichols said to Mr. Winans as purely hearsay. In fact, a good deal——

The Court: Objection sustained.

Q. (By Mr. Krause): Mr. Winans, have you had anything to do with assisting the attorneys in the defense of this case against yourself and your brothers and sisters, other than attending here in court?

A. Oh, yes, I have had many, numerous trips into Portland for consultation, and, of course, have submitted all the information that I had.

(Testimony of Paul Winans.)

Q. Including the time that you have spent in court here, how much of your time has been devoted to your assisting the attorneys making preparations in defending against these charges?

A. That is hard to measure, but it has been very great, I would say.

Mr. Buell: If the Court please, I do not believe that is a proper element of damage in any event in the case, the amount of time a party spends in connection with a suit.

The Court: I think he is asking for special damages of \$20,000 for, oh, that is for attorneys' fees.

Mr. Krause: May I point out what the purpose of this is? Mr. Winans is in business trying to make a living working, not spending time defending lawsuits.

The Court: Well, every defendant has to do that. [1843]

Mr. Krause: Yes, your Honor, but if this case was one where he was damaged in his business by reason of publication of these things, it includes time that he spends defending himself as to those charges, and it is damage to his business in the same way that other damages——

The Court: I am going to let it in.

Q. (By Mr. Krause): How much time did you say you devoted to this matter?

A. I done a tremendous amount of work at home, in Portland, and elsewhere, and I would say it would run, if it were consolidated, a long ways in excess

(Testimony of Paul Winans.)

of three months of my solid time within that period.

Q. Did you have a business and work that you were able to work on during those three months if you had not been engaged in this?

A. Certainly, this matter of time which had to be given to this matter has robbed me of my time I should be giving to my ordinary business.

Q. You employed my firm of Krause & Evans and Dennis Lindsay to handle the defense for you and your sisters and brothers? A. I did.

(Discussion off the record.)

Mr. Krause: Your Honor, I would like to offer the same stipulation that has been offered by other counsel, that if the Winans are entitled to attorneys' fees as part of their [1844] damages in this case, that we will make a statement at the time.

The Court: You have a different problem. The Winans are suing for \$70,000 general damages and \$20,000 for attorneys' fees.

(Discussion off the record.)

Mr. Krause: It came up during the direct examination. They asked whether he had agreed to pay \$20,000. He said he had not.

The Court: On direct examination?

Mr. Krause: Yes, when they had him on the witness stand. Is that right, gentlemen?

The Court: I do not remember that.

Mr. Krause: Pardon me. It was in the deposition; that is right.

(Testimony of Paul Winans.)

Mr. Jaureguy: In the deposition?

Mr. Krause: But the deposition is in evidence.

Mr. Jaureguy: But the question was withdrawn. He did not answer it and we went on a few pages and then we withdrew it.

The Court: Do you not agree that it is not reasonable value in this case; it is what the defendants have agreed to pay?

Mr. Krause: Well, the fact of the matter is that they have only agreed to pay what the services are reasonably worth, and there is no amount fixed. Now, I will ask Mr. Winans as [1845] to whether or not there has been any amount agreed upon and go into all that matter then.

Q. Mr. Winans, have you made any agreement with your attorneys regarding a definite fee to be fixed in this case?

A. No, we simply retained Mr. Krause's firm, and they thought that we would have to pay for a contingent, as I understand it, on the amount of the work that Mr. Krause and his associates would have to do.

Q. In general, that is your agreement with us, is that you will pay us what the services are reasonably worth? A. That is right.

Mr. Krause: I think you may examine.

Mr. Buell: If the Court please, I have here this proposed, or copy of the proposed bargain and sale deed with Mr. Stegmann's name on it that was referred to earlier in the trial which I would like to have marked now and show it to Mr. Winans.

(Testimony of Paul Winans.)

(Carbon copy of bargain and sale deed marked Plaintiff's Exhibit 94 for identification.)

Cross-Examination

By Mr. Buell:

Q. Mr. Winans, that Exhibit 94 that you are examining, would you run through it and see if you recall having seen it before?

A. Well, without a complete analysis of the whole thing to pick out discrepancies, yes, I have seen that before. [1846]

Q. Was that one of the copies or proposed drafts or proposed forms of deed to be given in this case that was prepared during the course of conferences between you and Mr. Stegmann and attorney Vawter Parker on September 8th and 10th?

A. Yes, that is right.

Q. Was that prepared on a Saturday or a Monday, or can you recall?

A. Prepared on Saturday, the 8th.

Mr. Buell: We will offer Exhibit 94 in evidence.

Mr. Jaureguy: I do not recall that. May I see it?

Mr. Ryan: I don't think we have ever seen it. Is this one of the pre-trial Exhibits?

Mr. Krause: It was not a pre-trial Exhibit. We have no objection.

Mr. Jaureguy: Well, I would like an opportunity to question the witness a little bit.

The Court: Proceed.

(Testimony of Paul Winans.)

Cross-Examination

By Mr. Jaureguy:

Q. Who suggested that this form of deed be changed, you or Mr. Vawter Parker?

A. That is a little hard to state definitely. This was prepared on that date, and I know that there were several drafts of the deed prepared before we finally arrived at one on that date which was acceptable on that date, to Walter Stegmann. [1847]

Q. Well, that is the information I wanted, and I am glad to get it, but it does not in any way answer the question I asked you.

A. Restate, please, and I will try——

Q. First I will ask you some more about that.

You say this was prepared on that date. What date was that?

A. September 8th, 1951.

Q. The question is: Who suggested the form of deed be changed, you or Mr. Parker or Mr. Stegmann, I say, Mr. Vawter Parker?

A. First I am wondering, is there a definite change in that final deed? What is the difference? I would like to know so I can answer intelligently.

Q. You do not know the difference between this and the others?

A. I said I did not analyze it; therefore, I am unable to say.

Q. All right, let us get the other one. Could I take that much time, your Honor?

(Testimony of Paul Winans.)

The Court: Isn't this the deed about which Mr. Vawter Parker testified?

Mr. Jaureguy: That is my understanding, yes.

Mr. Strayer: Yes, this is. In Mr. Vawter Parker's testimony, he said that he drew one form of deed with the name Blank Stegmann in the deed, and this is that deed.

Mr. Jaureguy: Well, of course, each of us remembers the [1848] part of the testimony that we think is important, and the part that I remember is in addition to that. This is a bargain and sale deed. This conveys—"have bargained and sold by these presents do grant, bargain, sell and convey unto the said Blank Stegmann, and unto his heirs and assigns the following described real property in the County of Hood River, State of Oregon."

This says, "have bargained and sold and by these presents does bargain, grant, sell and convey unto the said Chet L. Parker," and that was blank at the time, "and unto his heirs and assigns all right, title and interest in the following-described property in the County of Hood River."

Now, who suggested that change?

A. I think that came about jointly between Vawter Parker and myself. I don't know who raised the point. I imagine that I raised the point we were only selling our right, title and interest.

Mr. Jaureguy: Reserving the right to question him further when it comes my turn, I will not object.

(Testimony of Paul Winans.)

Cross-Examination
(Continued)

Mr. Strayer: Right now I think we are through.

Mr. Buell: We have no further questions.

Mr. Jaureguy: Then I do not object to it going into evidence.

Mr. Ryan: May I see that? This is the first time I have seen it, your Honor. I have no objection. [1849]

The Court: It may be admitted.

(Document previously marked Plaintiff's Exhibit 94 for identification was received in evidence.)

Mr. Jaureguy: This ends with the description we read before, the rest of this form of deed?

The Witness: I don't know; it was not in my possession.

Mr. Jaureguy: Well, how did this get in the hands of Mr. Buell; do you know?

The Witness: No, I do not.

Mr. Lindsay: I gave it to Mr. Buell. Mr. Parker turned it over to me. You will notice his initials in the lower right-hand corner.

Mr. Jaureguy: So this was in your possession, was it?

Mr. Krause: No, it was in Mr. Vawter Parker's possession, he testified, and he gave it to Dennis Lindsay up in his office.

Mr. Lindsay: No——

(Testimony of Paul Winans.)

(Discussion off the record.)

Mr. Krause: At any rate, it was in Vawter Parker's possession until it was turned over to Dennis Lindsay.

Cross-Examination

By Mr. Jaureguy:

Q. You do not know where the other sheet of it is? A. I beg your pardon? [1850]

Q. You do not know where the second sheet is?

A. No, I do not.

Q. Did you and Mr. Vawter Parker discuss together the appropriateness of having a warranty deed subject to the claims of the United States Government on the 40 acres?

A. Did we discuss it?

Q. Yes.

A. No, I stipulated first before the deed was to be drawn that we would not give a warranty deed.

Q. What reason did you give?

A. Well, simply on account of that question of title to the back forty.

Q. Didn't you tell Mr. Chet Parker that you would give a bargain and sale deed because that is the kind of a deed that came from Stegmann?

A. No, most certainly I never told Chet Parker anything like that.

Q. All right, then, you said you would give a bargain and sale deed? A. To whom?

Q. I say, who did you say it to?

(Testimony of Paul Winans.)

A. A bargain and sale deed?

Q. Yes.

A. Vawter Parker and Walter Stegmann.

Q. You told them you would give a bargain and sale deed? [1851]

A. Well, no, I won't say that. Now this particular discussion refreshes me about how that came about. That came about in the following way. I submitted this other paper that we had in evidence here a while ago that Stegmann was accepting this subject to the Government's claim, and when he refused to do that, Vawter Parker and I decided that it was only proper to specify the right, title and interest.

Q. Vawter Parker forgot about that when he testified, then? A. Did he?

Q. Evidently. A. Well, that is too bad.

Q. His testimony is not that. You heard Vawter Parker testify? A. Yes, I did.

Q. You heard him say that when Stegmann refused to sign that paper you asked him about it, and he said, "Inasmuch as we have changed the form of the deed, we do not need to have him sign it." Do you remember that?

A. Repeat that, please.

Q. Would you read the last question?

(Last question read.)

A. No, I do not remember that specifically.

Q. Did you discuss with Vawter Parker the ap-

(Testimony of Paul Winans.)

propriateness of having a warranty deed or a bargain and sale deed with respect to the small piece, tract one, and a quit claim deed with respect to the forty acres? [1852]

A. No, that was not discussed.

Q. That was not discussed? A. No.

Q. Was there anything at all discussed about the form of the deed to be prepared other than what you have already told us?

A. It certainly was at all times a deed which would not—which would be only our right, title and interest to the back forty.

The Court: That is not an answer to his question at all. Mr. Winans, I think it would be best if you just answer the question that is propounded to you by the attorney without telling what was in your mind or coming to your conclusions, and I think we will speed up the trial considerably.

The Witness: Thank you. I want to cooperate.

Q. (By Mr. Jaureguy): When did you employ your attorneys, your present attorneys?

A. Vawter Parker——

Q. No, no, these present attorneys?

A. Oh, these present attorneys?

Q. These esteemed gentlemen here.

A. On or about December 10th or 11th, I think, 1951.

Q. How long was it after you employed them that you told any of them that you had advised Chet Parker about this alleged defect? [1853]

A. At the same time that I employed them.

(Testimony of Paul Winans.)

Q. Same day that you employed them you told them that?

A. Well, I think I confirmed the employment a day or two later, but before—in the first conference I told them all the details.

Q. At the first conference did you discuss with them that you were under an obligation to notify Chet Parker?

A. To notify Chet Parker?

Q. Yes.

A. I do not think it was discussed.

Q. At all?

A. Not that I remember, not that I recall, rather.

Q. It might have been?

A. Oh, I think certainly there was no element of responsibility to notify Chet Parker.

Q. What was the reason for the long delay until December, until March, in filing this counterclaim and libel suit and conspiracy action?

The Court: I do not think that this witness is in a position to answer for Mr. Krause's professional competence or his lack of professional competence.

Mr. Jaureguy: Well, it is because the Court will take judicial notice of his professional competency that I think I have the right to question this witness about it.

The Court: Well, I recall at one of the pre-trial hearings [1854] you thought that his counterclaim was just ridiculous as a matter of law and said there was no basis for it.

Mr. Jaureguy: I still say so.

The Court: Well, then, it is a legal question and

(Testimony of Paul Winans.)

not a question that this witness would be in a position——

Mr. Jaureguy: Oh, well, it was not on that basis that I was asking him. It was not on that basis at all. I have a different theory entirely.

The Court: All right, go ahead.

Q. (By Mr. Jaureguy): Can you answer the question? A. Repeat it, please.

Q. If you had this long conference with him in December, do you know why it was that they did not file an appearance in this case until along the first of March?

A. That was entirely in the hands of the attorneys, and I could not give you any special reason.

Q. Isn't it a fact that it was not until quite some time after you employed them that you told them that you had told Chet Parker of this defect?

A. No, I told them this at the very start.

Q. You first saw Chet Parker, I think you said, on August 27th? A. Yes.

Q. 1951? A. Right.

Q. When did you have occasion after that date to try to [1855] recollect the type of clothes he had on on that day?

A. That is one of those things that just fixes, like you say, in your mind's eye, like a photograph, I know——

Q. You do not want to answer my question?

A. Pardon?

Q. You do not want to answer my question?

(Testimony of Paul Winans.)

A. Pardon me, I am sorry. Restate it and I will try to do it right.

Q. The question is: How long after that did you have occasion to try to recollect the kind of and color of clothes he had on on that day?

A. Oh, I think that I came back was probably when these rangers testified here in this court.

Q. And that reminded you? A. Pardon?

Q. That reminded you of the type of clothes he had on?

A. Well, it just brings back one of those things, you know.

Q. You say you were working on a map when he showed up there? A. Right.

Q. Where is that map? A. I have it.

Q. Where?

A. I think I have that in my brief case. I am not sure.

Q. Here? A. Yes. [1856]

Q. Could he look for it, your Honor? May I request him to go and look for it?

The Court: Oh, yes, go ahead.

Mr. Jaureguy: Will you get it, please?

The Witness: I will have to step down to do that.

The Court: Step down.

(Witness leaves witness stand and then returns to witness stand.)

The Witness: Now, this is a home-made affair, and that is, as a matter of fact, an enlargement off

(Testimony of Paul Winans.)

a Metsker map that I had, and the enlargement was made with pantograph steps. Here we have the first step off the Metsker map, second, third and fourth, in which I developed this larger picture of Lot 1.

(Pencil map marked Defendant Parker's Exhibit 129 for identification.)

Q. (By Mr. Jaureguay): Now, this folder you have here is labeled "maps." Are there some other maps besides Exhibit 129?

Mr. Krause: Wait a minute, are we going to dig into all the maps that he has there, your Honor? This exhibit was not brought in and marked in any way, and it is being brought in here at this late date, and now he is going to take up every other map we have got?

The Court: I appreciate that. However, there was a number of different documents introduced in evidence by the plaintiff in this case that had not been marked and had not been [1857] displayed to opposing counsel. At that time I indicated that Mr. Jaureguay and the other attorneys would have the same privilege as the attorneys for the plaintiff in submitting documents which had not been marked at the pre-trial conference.

This is a little different in view of the fact that it is a document in the possession of an adverse party which could have been discovered by the taking of a deposition prior to the time of the trial.

Mr. Krause: I do not object to this, to cut it short, perhaps, but I do not see why he is going to

(Testimony of Paul Winans.)

be inquiring into all the other maps that Mr. Winans has there. That was his last question.

The Court: Do they pertain to the case?

Mr. Jaureguy: When I find out that, I can answer his question. Yes, I am asking him what other maps are there in there.

The Witness: Oh, some very old ones. Here we have one of the land that was surveyed and set out by my father and myself way back in 1922 for the sale of home sites.

Here we have another blueprint of the same area on a different layout. Another I think that is similar to the first one.

Here is a sketch of my own of a possible layout back in those early days, 1922, and I think this is another copy—no, it is not, it is a little different, but it is more or less [1858] the same thing.

I think that perhaps one of these was the final plan which was certified to by the County Surveyor and registered engineer at that time.

The other one is simply with respect to the water filing made in the State Engineer's Office.

Q. There is a rectangular matter going cater-corner across the lower right-hand quarter, and then below that—well, I call south, it is to the left of that—what is this that is going, pointing up like a snake there? A. Inlet Creek.

Q. That is Inlet Creek?

A. That is right.

Q. What is this straight line that goes right

(Testimony of Paul Winans.)

straight across at the right end of this rectangular matter?

A. That is the section line between Sections 9 and 16.

Q. So I take it that the end of the arrow which almost touches that line, that is the meander corner?

A. That is the meander corner, yes, sir.

Q. That is what you were working on the day——

A. I was trying to work up a plan to go over with Stegmann, and it was interrupted by the arrival of Stegmann and Mr. Parker at that time. This is the map I referred to that I was working on. I had not gotten very far. I had not determined on any special plan. I believe I explained what I had in mind [1859] to Mr. Parker. He overlooked it. Stegmann did not take a hand.

Mr. Jaureguy: All right, we will offer this 129 in evidence.

The Court: Any objection?

Mr. Buell: No objection.

Mr. Krause: We have none.

The Court: It may be admitted.

(Pencil sketch previously marked Defendant Parker's Exhibit 129 for identification was received in evidence.)

Q. (By Mr. Jaureguy): Now, in this discussion you had, or argument, I don't know which you call it, that you say you had with Stegmann and Parker about going up and they said it was not necessary for you to go up?

(Testimony of Paul Winans.)

A. It was no argument; just a brush-off on their part.

Q. Just a brush-off on their part?

A. Just a brush-off on their part.

Q. And the brush-off caused you to say that you reserved the right to claim that——

A. I did.

Q. Prior to that time, I think you testified the other day when you were on the stand before, that you said that Mr. Stegmann had said that there was a surveyor, a friend of his who was a surveyor, and that you did not need to get these surveyors [1860] any more?

A. Well, he propositioned me on it, would it be all right if he would bring a friend of his who had done some surveying.

Q. Didn't he say it was not necessary to bring these other men, Mr. Bogar and Mr. Haynes; isn't that what you testified to?

A. I don't think he approached it that way. No, I pretty well recall his exact words.

Q. What were his exact words?

A. He said, "We are getting along so slowly here,"—pardon me, I am getting ahead of myself—these surveyors was tentatively planning to come back in one week more, the end of the following week, and as we walked out on the trail for the property, he said, "They are getting on so—these surveyors of yours are getting on so slowly I was wondering if it would be all right if I would bring

(Testimony of Paul Winans.)

up a friend of mine who has done some surveying to finish the job.”

Q. What he said, was that indicating that you were to bring on these surveyors in addition to his friends? A. No, he said a friend of his.

Q. Well, was it your understanding that the friend was to be in addition to your surveyors, or you were to bring your surveyors, also, and his friend, too?

A. No, his proposition was that he bring his friend to do the work, and I came back and said that if, subject to it being [1861] satisfactory with me, I guess that would be all right, subject to the work being satisfactory.

Q. That was when they were up there before?

A. Pardon?

Q. The conversation you have now related took place when Mr. Bogar and Mr. Haynes were up there before?

A. No, this is when Mr. Haynes and Mr. Kuns were surveying.

Q. I see. A. August 26th, Sunday.

Q. When did Mr. Haynes and Mr. Bogar survey? A. They surveyed on August 18th.

Q. Then it was the 26th when Haynes and Bogar—— A. Both 25th and 26th.

Q. Haynes and Bogar—what is that?

A. Both August 25th and 26th.

Q. Then it was the next day that Parker came up, the 27th?

(Testimony of Paul Winans.)

A. That was the date that I have, and it is accurate within a day or so. I have no notes or memoranda on it. I know he surprised me coming so quickly.

Q. This \$4,750 for the additional reserved area, you say that was computed after you had determined the acreage? A. Yes.

Q. When did you determine the acreage?

A. September 8, 1951.

Q. You have offered in evidence here, I think that is admitted, [1862] but you have identified a letter to the Bracker Timber Company?

A. Yes.

Q. That company deals in timber lands, does it not? A. Yes.

Q. Did you write to any stockmen's association or dealers? A. Pardon?

Q. Did you write to any dealer in livestock or a stockmen's association?

A. No, the nearest to that, I did write a letter to, or telephone, perhaps, the National Farm Loan Association at The Dalles.

Q. Where is that letter? A. Pardon?

Q. Where is that letter?

A. I said wrote or telephoned. I have not a letter.

Q. You have not got the letter?

A. No, I do not.

Q. You did not write to any real estate man that deals in farm lands in Portland?

A. No, I think not.

(Testimony of Paul Winans.)

Q. How did you happen to pick a timber man to write to?

A. Well, I had dealings with Mr. Bracker from time to time, and I think, if I recall right, I had him look up some references at some previous time on something else, so I naturally reverted to Mr. Bracker. [1863]

Q. You say you were not asked by anybody to furnish—there was no discussion between you and either Stegmann or Chet Parker about furnishing either an abstract or title insurance?

A. Most certainly, it was never asked or requested by either of them at any time.

Q. You did not volunteer to furnish anything?

A. Pardon?

Q. You did not volunteer?

A. I expected to turn over, at least to submit this title insurance policy that I had.

The Court: Just answer Mr. Jaureguy's question, will you, please?

The Witness: Again, please?

Q. (By Mr. Jaureguy): You did not volunteer to furnish either an abstract or title insurance?

A. No.

Q. You expected to turn over your title insurance policy, you say?

A. At least to submit it to them.

Q. Why didn't you?

A. I couldn't find it at the time.

Q. Oh, you could not find it? When did you look for it?

A. Pardon?

(Testimony of Paul Winans.)

Q. When did you look for it?

A. Oh, several times. I finally located it. [1864]

Q. One time was on August 18th?

A. No, I didn't look for it on that date.

Q. One of them was on August 11th?

A. Pardon?

Q. One of them was on August 11th?

A. August 11th, I imagine that I did.

Q. On August 18th you say you did not look for it at that time? A. No, I did not.

Q. How are you able to remember that?

A. Because there was no time, hurry, I would have no time to do that. I was pressed to get out this acknowledgment, this notification of Election to Purchase and acknowledgment. That is all I had time to do.

Q. But you say on that day you did not talk to Chet Parker? A. Absolutely not.

Q. And discuss the question of your title?

A. Not with anyone at that time any more than Stegmann knew all about it at that time.

Q. And you did not look for your policy?

A. No, not on that date at all.

Q. You say Title and Trust Company never interviewed you before the institution of the suit?

A. Not at all.

Q. Do you know whether they interviewed your attorney, Vawter [1865] Parker?

A. He never mentioned it; therefore, I say they did not.

(Testimony of Paul Winans.)

Q. Had you heard before the institution of the suit that the Title and Trust Company was investigating the possibility of conspiracy and collusion between you and Chet Parker?

A. No, I heard nothing like that.

Q. You heard nothing like that. That part did not injure your reputation?

A. Pardon? Well, it did when it came out. It might have injured my reputation unknown to myself; I will say that.

Q. On paragraph five of the complaint, the last complaint you filed, page twelve, you say, "During the month of July, 1951, and subsequent thereto, the defendants Chet L. Parker and Lois M. Parker and Walter Stegmann entered into and engaged in a conspiracy to defraud the plaintiff." The plaintiff is Title and Trust Company. A. Yes.

Q. What is your understanding of what these defendants did to defraud the Title and Trust Company? A. That reverts back to the——

Mr. Krause: Just a moment. I want to make my objection to that. Of course, I drew that complaint, or Mr. Lindsay did, one of us, and the evidence is all in here now of conspiracy, and I do not know whether we want Mr. Winans to review all of it for the Court, but that is what it would involve, and the [1866] evidence was brought in by all of the witnesses. Either it presents a conspiracy or it does not. Now, for Mr. Winans to review it does not seem to me that is proper cross-examination of the witness, anyhow.

(Testimony of Paul Winans.)

The Court: If he had signed the answer, which he did not do in this court, a file may be used for purposes of impeachment. I do not see what useful purpose is going to be served to go into the meaning of those words and why they were in the complaint, in his cross-complaint. How long will it take you if you go into it?

Mr. Jaureguy: I would not want to prophesy, your Honor.

The Court: I am going to sustain the objection.

Mr. Jaureguy: I wonder if I may have the record show that a similar allegation was made in the original cross-complaint that they filed in 1952?

The Court: Yes.

Mr. Krause: If that is true, I would agree with you.

Mr. Jaureguy: Well, I will prove it to you.

Mr. Krause: I am taking your word for it.

Mr. Jaureguy: I will certainly apologize if it is not in there.

That will be all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan:

Q. On August 11th, Mr. Winans, what time of the day on [1867] August 11th did you prepare the option that was——

A. I think it was finished on or about perhaps through the noon hour.

Q. I see. Now, at the time of this conversation

(Testimony of Paul Winans.)

between yourself and your sister, Ethel, in which you say that Mr. Stegmann was present, that took place at the family house there.

A. That is right.

Q. At that time, had the option been prepared?

A. No, not completed. I had been working on it, I think.

Q. Did you show your sister, Ethel, a draft of it, or a portion of it, or was that in the conversation?

A. I don't recall clearly. It is quite possible that I carried over an uncompleted draft of it.

Q. Is it your testimony that at that time it was understood between you and Mr. Stegmann that he was to have both Lots 1 and 2? A. Yes.

Q. At the conclusion of this conversation, you then had lunch with Mr. Stegmann?

A. No, I think we completed the option first and then lunch.

Q. When did you have your sister, Ethel, sign the option?

A. Immediately that it was finished.

Q. That was sometime in the afternoon of the 11th?

A. Well, I think it was possibly through the noon hour. [1868]

Q. Was Mr. Stegmann present then?

A. No, he remained at the service station while I carried it over for her signature.

Q. Did your sister, Ethel, question you regarding the fact that there was not a division of the value on these lots stated in the option?

(Testimony of Paul Winans.)

A. No, that had been set out at what it might be before that time, had been discussed.

Q. What it might be?

A. That it might take that form. You see, this was tentative until Stegmann returned and also subject to my confirmation, but that whole fact had been submitted to my sister.

Q. You mean that you, at the time of the actual agreement, what you finally decided to sell, was the entire two lots as one unit for a hundred thousand dollars?

A. Yes.

Q. And that is the way you embodied it in the option?

A. Yes.

Q. Then the tentative agreement did not bind you, but the option did; is that right?

A. That is correct.

Q. You were not concerned to tell Mr. Stegmann about the claim of the Government; is that correct?

A. To tell him about it?

Q. Yes. [1869]

A. Oh, yes, that had started, oh, weeks before. I told him all about it.

The Court: I do not understand. You asked if he was concerned to tell him?

Mr. Ryan: Yes.

The Court: I do not understand what that means.

Mr. Ryan: He has testified here that he did tell him.

The Court: Yes.

(Testimony of Paul Winans.)

Mr. Ryan: And he took pains to inform him of the existence of this problem.

The Court: Is that what you mean about "concern"?

Mr. Ryan: Yes, your Honor.

The Court: Did you so understand it, Mr. Winans?

The Witness: That it was a matter of concern?

The Court: Yes, that you took pains to notify Mr. Stegmann?

The Witness: Oh, very definitely.

The Court: All right, proceed.

The Witness: I could not have leaned over backwards farther in my explanations.

The Court: Go ahead.

Q. (By Mr. Ryan): Was there any discussion at the time you drew the option regarding a statement in the option of your position with regard to the Government claim of ownership?

A. I think it was probably stated, but, at any rate, if I [1870] were not to set it out that way, there would have been no deal.

Q. Was there a discussion; that is my question.

A. I do not think a discussion, a flat statement on my part, probably.

Q. What was your flat statement?

A. Well, this option was simply drawn up on the basis of a meeting of the minds between us, and the meeting of the minds was my proposition without any comeback from Stegmann about it. He took it the way I set it out.

(Testimony of Paul Winans.)

Q. My question was: Was there any discussion about putting in the option a statement of this problem regarding the title?

A. Further than I did, no. It is in the option, I maintain.

Q. It is in the option?

A. The plain language of the option is a notice to anyone that——

The Court: We are not going to get into any legal discussion.

The Witness: Pardon me. I am sorry.

Mr. Ryan: I am not going to go into that, but I wanted to know, to have him explain what he means by "it is in the option."

The Court: He explained that in his testimony several weeks ago.

Q. (By Mr. Ryan): You felt that that was a sufficient preservation of any right of yours which might be endangered by your [1871] failure to give a full statement of the, what the intention of your deal was? A. Is that yes or no?

The Court: You do not have to answer it yes or no.

Mr. Ryan: No, I am not asking——

The Witness: Repeat the question, please.

(Last question read.)

A. In view of the full explanation that I had submitted to Mr. Stegmann time and again, I figured that it was sufficient.

(Testimony of Paul Winans.)

Q. When did this call to the Forest Rangers take place?

A. I think that that exact date could be determined, but, as I recall it roughly, it must have occurred—I am very sure that it occurred before the date of August 1st, probably considerably a few days before that, anyway.

Q. Was that before or after you had decided to let Mr. Stegmann have Lots 1 and 2?

A. Oh, yes, that did not—didn't definitely come up until August 11th. On August 1st we set up the tentative agreement, and certainly they called the Forest Service prior to that.

Q. On September 8th you were not present during the entire course of the day with Mr. Stegmann and Mr. Haynes on September 8th, were you, Mr. Winans? A. There was a break in that.

Q. When did you absent yourself or leave them?

A. I didn't quite get your question. [1872]

Q. When did you leave them; approximately what time did you leave them on that day?

A. I imagine I left on, early in the afternoon, perhaps by two o'clock, and returned within an hour.

Q. That was your only absence from them, then?

A. That was the only absence.

Q. On August 27th, I believe you said Mr. Chet L. Parker came to your place with Mr. Stegmann?

A. He did.

Q. That was when this question over the map, he looked at the map? A. That is right.

(Testimony of Paul Winans.)

Q. And betrayed a professional interest in it?

A. Right.

Q. He was not introduced at that time?

A. Pardon?

Q. He was not introduced at that time?

A. Oh, yes, he was.

Q. Was he introduced? A. Yes, sir.

Q. Was he given a name, Chet Parker; you knew him as Chet Parker at that time?

A. Pardon?

Q. Was he given a name, Chet Parker; you knew him as Chet Parker at that time? [1873]

A. After the introduction.

Q. Did you have in your possession at that time on August 27th the letter of—referring to the bank in Hood River, to Chet L. Parker as a reference for the financial reliability of Mr. Stegmann?

A. No.

Q. When did you first obtain that?

A. I didn't obtain it.

Q. Did you know about that at any time?

A. I did.

Q. When?

A. When Mr. Bergland showed it to me in the bank.

Q. When was that?

A. May I be referred to the date in that letter?

Q. Yes. A. What is the date?

Q. I do not know.

Mr. Jaureguy: August 15, 1951.

(Testimony of Paul Winans.)

Mr. Lindsay: It shows receipt from the bank on August 16th, on the 15th or 16th, as I remember.

The Witness: Yes, I probably saw it just about that date.

Q. (By Mr. Ryan): Did you make any connection between the party introduced to you as Chet Parker and the person who had given a statement regarding the reliability of Mr. Stegmann?

A. Yes, I noted it. [1874]

Q. You noted it? A. Yes, I noted it, yes.

Q. Did you ask any questions of him?

A. No, I made no comment.

Q. Was that on the basis of your belief that he was a different person?

A. A different person?

Q. Than the Chet L. Parker that had given you the reference?

A. No, I didn't. It was perhaps a little in the nature of a surprise, but I said nothing about it.

Q. At that time did you cease to have further concern regarding the financial reliability of Mr. Stegmann?

A. Not particularly. By that time he paid \$5,000. Checks had gone through.

Q. So you did not ask Mr. Chet L. Parker anything about the letter? A. No, I didn't.

Q. Or mention it to him or go into the matter at all? A. I did not.

Q. But you did connect the name, Chet L. Parker, with the person——

A. Yes, I did, instantly.

(Testimony of Paul Winans.)

Q. Isn't it true, Mr. Winans, that Mr. Stegmann paced out an approximate area for the purpose of ascertaining how much ground could be given in the additional reservation which you [1875] were seeking?

A. No, he did not.

Q. Who did that?

A. No one.

Q. You mean there was nothing done on the Lost Lake area regarding that additional reserved land?

A. No.

Q. Was that done solely on the maps?

A. On the maps only.

Q. Was there any discussion up there on the Lost Lake area with regard to what portion of that area would be given to you as an additional reservation?

A. I think there was, that I opened the matter there with Stegmann on the date of August 30th by asking him if I wanted to retain enough land to include Inlet Creek to the west line of Lot 1, if I could negotiate for it.

Q. What did he say?

A. I think he intimated it would probably be agreeable.

Q. So there was some understanding as to what portion——

A. It was not an understanding; it was just simply a question and he did not deny it. He did not refuse.

Q. You say August 30th? I am assuming that you mean the day that you went up there on the survey trip?

A. I do.

(Testimony of Paul Winans.)

Q. Was that the day Mr. Chet L. Parker was there and Myron [1876] Parker? A. Yes.

Q. You are not certain whether that is the 30th or the 31st? A. Well, I made no notes.

Q. Was Mr. Chet L. Parker present when this conversation took place? A. He was.

Q. Did he say anything to contribute to it?

A. Not a word.

Q. In his capacity of surveyor, did he ask you any questions referring to it?

A. I don't recall any.

Q. Was a valuation discussed at that time?

A. No.

Q. With regard to the additional area?

A. No.

Q. That exclusively took place in Vawter Parker's office? A. Yes, in Vawter Parker's office.

Q. Up on the lake property there on August 30th or 31st, did you have any conversation with Mr. Chet Parker directly?

A. In company with other persons, yes.

Q. Do you remember specifically a discussion regarding income tax?

A. Well, that was after we were off the property, or as we left the property that began. [1877]

Q. I see; and what did that relate to, the sale of this property, or just generally the problem of income tax?

A. No, Stegmann opened that up, informing me or trying to inform me there that we could—I think that prior to that Stegmann had propositioned me

(Testimony of Paul Winans.)

himself that we did not need to take all the money in the year 1951, that if we wanted to carry over and take half of it in 1952, it would save us on income tax, and he opened this discussion with the apparent purpose of inducing me to take all of the money in 1951.

Q. All of it in 1951? A. Yes.

Q. Then did Mr. Chet L. Parker discuss that?

A. Oh, he came into the discussion shortly, yes.

Q. In whose car did you go up to the lake property on the day we are discussing now?

A. Pardon?

Q. In whose car did you go up to the lake property on the day we are discussing now?

A. Stegmann's Mercury.

Q. On August 18th you drew the Election to Purchase and the permission for the extension of time after you came back down from the lake?

A. Yes, the acknowledgment of Notice of Election contains that provision for extension.

Q. You are familiar with that, are you [1878] not?

A. Yes, I saw it here again this morning.

Q. You signed that, and Ethel Winans signed that? A. Yes.

Q. Did Ethel come down to the office, or how did she sign it?

A. I think I took it over to her.

Q. Then what did you do? Did you come on back down to see Mr. Stegmann? A. Yes.

(Testimony of Paul Winans.)

Q. Was it before or after that that Mr. Stegmann signed, according to your recollection, the yellow copy of that document?

A. It would be a little hard to say, but the natural course would be to sign it when I got back with it.

Q. Were Mr. Bogar and Mr. Haynes out there at the time you went up to see Ethel?

A. Oh, yes.

Q. Your recollection is that your mention of the policy of title insurance was confined to the evening of the 11th when you attempted to find it, or what time did you mention?

A. When did I mention it?

Q. Yes.

A. I am quite sure that I made a casual search for it on August 18th—pardon me, I want to correct to August 11th. That is just a slip of the tongue.

The Court: All right, go ahead. [1879]

Q. (By Mr. Ryan): Is that the same as your recollection at the time you took your deposition?

A. Pardon?

Q. Is that the same as your recollection at the time you took your deposition?

A. I believe so.

The Court: Do you want to impeach him on the statement?

Mr. Ryan: I have this marked, your Honor, and I misplaced my mark.

The Court: Tell him the number of the page.

(Testimony of Paul Winans.)

Well, Mr. Winans will be here this afternoon. During the noon hour you can check it. Have you any more questions as far as Mr. Winans is concerned?

Mr. Ryan: No, I have no more questions.

The Court: Any further questions of Mr. Winans?

That is all, Mr. Winans.

(Witness excused.)

The Court: We will recess until 1:30.

(Noon recess taken.) [1880]

Afternoon Session—1:30 P.M.

PAUL WINANS

recalled, testified as follows:

Cross-Examination

(Continued)

By Mr. Ryan:

Q. Mr. Winans, would you turn to your deposition there, page 135? A. 135, I have it.

Q. The question beginning at the top of the page: "Q. Did you ever show him," meaning that is Stegmann, "the policy of title insurance you had on the place? A. No, I never did.

"Q. Did you look for it while you were preparing the option? A. No.

"Q. Where did you obtain the description of the property?

(Testimony of Paul Winans.)

“A. I knew the description so well I didn’t have to refer to anything.”

Do you recall giving that testimony at the time of your deposition?

A. Yes, I take it this was the correct testimony.

Q. Is it now your testimony that you did look for your title insurance policy at the time you were preparing the option?

A. That is as I recall it. [1881]

Q. As you recall it now. At the time of your deposition you did not think that you did look for it.

A. Let me read that carefully, will you?

Q. Surely.

(Witness consults exhibit.)

A. I got to get fixed in my mind what I did say. Well, I think it is not absolutely inconsistent.

Q. Well, my question is this: Is it now your recollection that you did search for your title insurance policy at the time you were drawing the option?

A. Yes.

Q. You have heard Mr. Stegmann’s testimony regarding the fact that, as he recalled it, you searched for it in some papers and you could not find it on the night of the 11th or the day of the 11th.

A. However, the reason he gave would have some bearing on my answer.

Q. Now, all I am asking you now is did you search for it?

A. Yes, I believe I did, casually.

(Testimony of Paul Winans.)

Q. Did you inform Mr. Stegmann that you were searching for it?

A. Did I inform Mr. Stegmann I was searching for it?

Q. Did you inform Mr. Stegmann that you were searching for it?

A. As I recall it, he was there and saw me search for it, casually, I say. I made no very far-reaching search for it.

Q. Does this refresh your memory to any extent just with regard [1882] to whether or not you used the tax receipts to write out the description?

A. No, I did not.

Q. In other words, you made the description from memory?

A. Yes, absolutely.

Mr. Ryan: That is all the questions I have.

The Court: Any further questions?

Mr. Krause: We have nothing further. That is all, Mr. Winans.

The Court: That is all.

(Witness excused.)

Mr. Krause: If the Court please, now with respect to these attorneys' fees, I would like to ask counsel whether they are prepared to stipulate as we have in the others, if as a part of our damages we are entitled to recover the costs of this case, that the Court may fix reasonable attorneys' fees based upon a statement that we will make as all the other attorneys will that are claiming attorneys' fees of the extent of the services rendered.

The Court: We will start in with Mr. Jaureguy. Are you willing to so stipulate?

Mr. Jaureguy: Yes, I will stipulate.

Mr. Strayer: I would like to make it understood, Mr. Krause, we are willing to stipulate that insofar as a reasonable amount is concerned, the Court can fix that the same as anything [1883] else, but I am still concerned about the problem your Honor raised this morning whether there would be an obligation to pay that amount.

The Court: Yes, but the witness testified now that he agreed to pay reasonable attorneys' fees.

Mr. Krause: No agreement as to the amount at all.

Mr. Strayer: I think that is right.

The Court: How about you, Mr. Ryan?

Mr. Ryan: May it please the Court, I would like to have the opportunity to reopen my case in chief for that purpose. I agree that there should be some evidence of——

The Court: You would like to reopen your case in chief?

(Discussion off the record.)

Mr. Ryan: Yes, I will enter into the stipulation Mr. Krause has prepared, yes.

The Court: All right, so stipulated, then, that in the event that the Court decides that as a part of the damages to which Mr. Winans is entitled, or the Winans are entitled, if I find that they are entitled to any, then as to the amount of such attorneys' fees, I can fix it on a basis of a statement of

Mr. Krause and Mr. Lindsay, if necessary, as to the amount of work which they performed. [1884]

* * *

JAMES K. BUELL

called as a witness in behalf of the Third-Party Defendants, having been first duly sworn, was examined and testified as follows:

The Court: Can we stipulate that Mr. Buell is an attorney licensed to practice in the State of Oregon?

Mr. Jaureguy: Yes.

Mr. Ryan: Yes.

Mr. Krause: Yes.

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. James K. Buell.

Q. You are an attorney licensed to practice in Oregon? A. Yes.

Q. How long have you been in practice, Mr. Buell? A. Since November, 1946.

Q. You are a member of the firm of Phillips—

A. Coughlin, Buell & Phillips.

Q. You are the attorneys for the Title and Trust Company, or one of the firms for the Title and Trust Company in this case?

A. That is right.

Q. You were the attorney that originally filed the original complaint in this particular action here?

(Testimony of James K. Buell.)

A. I prepared and filed the original complaint.

Q. Mr. Buell, do you recall the approximate date when you [1887] were consulted by the Title and Trust Company regarding this case?

A. It was about one or two days prior to the first conference that I had with the Marsh brothers and Mr. Dashney, together with Mr. Alstadt.

Q. Do you know about when that was?

A. That would be about September 23 or September 24.

Q. When was the first time that you met Chet Parker?

A. That was September 27, 1951, I believe.

Q. Where did you meet him?

A. In the office—or the offices of Marsh & Marsh and Dashney in McMinnville.

Q. Besides yourself and Mr. Parker, who else was present?

A. Why, Mr. Alstadt and Mr. William Dashney.

Q. Did you inquire of Mr. Parker at that time as to the number of times and the occasions when he had met any of the Winans, and particularly Paul Winans?

A. I asked him what—I asked him when he saw Winans and what Mr. Winans had said to him in connection with the purchase of the Lost Lake property.

Q. By the way, before we go on with that, what, if anything, had Mr. Parker told you about who had purchased that property?

(Testimony of James K. Buell.)

A. He told us that he had purchased the property.

Q. That he had purchased it. Did he say that he purchased it direct from Winans or from some other party? [1888]

A. Well, he told us that he had purchased an option on the property from Walter Stegmann and had paid \$25,000 for it.

Q. How many times did Mr. Parker say that he had met Paul Winans?

A. He said that he had met him once.

Q. Did he give you the date or the occasion when he had met him?

A. He didn't give us the date, but he gave us the occasion as being on a survey party on the property surveying out the line between the north and south parts of the Government Lot 1.

Q. Did he say who was doing the surveying, Mr. Buell?

A. He said that he had gone up on the property with Stegmann as a surveyor from Portland.

Q. What, if anything, did Mr. Parker say regarding any—well, first of all, his knowledge of any defect in the title to the forty acres?

A. Well, he told us that he did not know anything about any defect in the title until after the deed had been received and recorded.

Q. Did he say whether any representations had been made either to him or in his presence regarding the state of the title to the forty acres?

A. Representations by whom?

(Testimony of James K. Buell.)

Q. Well, by the sellers or anybody acting for them?

A. He did not tell us that any particular representations had [1889] been made to him in the course of his one contact with Mr. Winans. If I can explain that a little further, I think I can clarify it.

Q. I wish you would.

A. When I had gone down there, it was two days following the date of the conference with the two Marsh brothers and Mr. Dashney, and at that time I, together with the partners in the firm, had concluded that the prospects of attempting to perfect the title were fruitless, that there was not much chance of obtaining any relief in pursuing that tack, and that the best opportunity or the best chance to come out of the transaction with a, with no loss or a minimum of loss would be to rescind the entire purchase, and so by the time we had made our appointment and met with Mr. Parker and Mr. Dashney, I had outlined in my own mind the type of suit that I thought should be brought, and in the case of this first meeting with Mr. Parker, we had finally reached a tentative agreement to settle the claim against the title company and proceed with the rescission suit, I was questioning him with regard to his knowledge of the sale and the purchase to see if there were any direct representations that had been made by Winans to Parker pertaining to the title because I had relied, was relying primarily on the option itself, which I considered

(Testimony of James K. Buell.)

to be a representation of marketable title, but I was somewhat concerned as to whether or not the representation, such as it may be in the option, as to whether [1890] that would run from Stegmann to Parker in the case of the purchase of the option by Mr. Parker, so I particularly questioned him about just exactly what Mr. Winans had had to say about the property on the occasion that they were up on the lake. It was in the course of that questioning that he stated that he did not have an opportunity to talk very much with Mr. Winans and that there was no discussion between them as to the title on that one occasion that he had met him.

Mr. Krause: I think you may cross-examine.

Cross-Examination

By Mr. Jaureguy:

Q. What you have been testifying to with respect to discussions or conferences in your testimony here on direct, that all took place the first time you met Chet Parker? A. Yes.

Q. Who did you say were present at that conference?

A. Mr. Dashney, Mr. Parker, Mr. Alstadt and myself.

Q. What about the Marsh brothers?

A. No, they were not present.

Q. Isn't it a fact that Frank Marsh was there at that meeting?

A. No, Frank and Gene were on a hunting trip

(Testimony of James K. Buell.)

at that time, and that was the reason that Mr. Dashney was representing Mr. Parker. Mr. Dashney had been called into the first meeting that I had had with the two Marsh brothers for the purpose of being familiarized with the background of the transaction so [1891] that as soon as Mr. Parker got in touch with the office, Mr. Dashney could handle the deal and we could start the rescission suit as soon as possible.

Q. Well, now, do you know whether there had been any previous meetings that you had not attended?

A. Between representatives of the title company and the Parkers?

Q. Yes.

A. Well, I have learned through the title company that there had been one.

Q. So that there had been one meeting there in McMinnville that you understood that Mr. Dwyer was there and Mr. Alstadt and one of the Marsh brothers?

A. Yes.

Q. Then had you attended the second meeting with the attorneys?

A. The second meeting that you refer to was the first meeting that I had anything to do with the transaction.

Q. Who was present at that meeting?

A. That was—it started out a meeting between Mr. Alstadt and myself and Francis and Gene Marsh. Then after about an hour of conference, Mr. Dashney was called in.

(Testimony of James K. Buell.)

Q. Well, at that meeting was there any reference to this statement that you say—oh, you had not met Parker yet? A. No, I had not.

Q. Did you discuss with them how this transaction was handled? [1892]

A. You mean the details of exercising the option and the closing?

Q. Anything about the transaction, how the purchase was handled.

A. There was a general discussion which was just to the effect that Mr. Parker had purchased an option on the property from Mr. Stegmann, and we were shown the photostat or, no, no photostatic copy, we were shown Mr. Parker's signed copies of the option and the notice of Election to Purchase; that is, the original copies which did not bear the signature of Mr. Stegmann on them but did bear the signature of Paul and Ethel Winans.

Q. Well, your company had those before, did it not? A. No.

Q. Or copies of them?

A. No, on the first meeting, which was on September 25th, we were shown the copies and made arrangements that evening to have photostatic copies made, which were then mailed up to us within a day or two following by the Marsh brothers.

Q. At that time was there any discussion other than you have related as to how this transaction was handled? That is to say, whether or not it was discovered that Parker purchased the option and

(Testimony of James K. Buell.)

that thereafter he handled any negotiations or whether he kept out of the picture?

A. I don't think there was.

Q. You do not think there was. At the third meeting when [1893] Dashney was present and the rest of them, how did the question happen to come up as to whether, how many times he had met Winans?

A. It came up, as I stated, in the course of my explaining to Mr. Parker that the basis of a rescission suit against the Winans family to rescind the whole transaction on the ground that they had reported that they had a marketable title to the forty-acre tract when, in fact, they did not, and we explained that we had conclusive evidence that they knew that they did not have marketable title by virtue of this prior claim against Pacific Abstract & Title Company.

Q. Now, did you have another meeting when Chet Parker was present? A. Yes.

Q. That was about two weeks later, was it not?

A. It was on October 11th or 12th, Friday.

Q. The one you have testified to, you say, was on September 27th? A. Yes.

Q. In between those two meetings, you made quite an intensive investigation of Parker and Winans and how this deal went through, did you not?

A. No, the only—we made some private—or attempted to make a private investigation of Mr.

(Testimony of James K. Buell.)

Stegmann and made—or had made a number of inquiries about Mr. Parker.

Q. At that time you were under the suspicion that Parker had [1894] conspired with Winans, were you not? A. No, not whatsoever.

Q. Do you know who it was, the representative of the Title and Trust Company, that interviewed Mr. Wortman at the First National Bank of McMinnville? A. I believe it was Mr. Mears.

Q. And the purpose of your interviewing Mr. Wortman was to investigate your suspicion that there was a conspiracy between Winans and Parker; isn't that correct?

A. No, it was to investigate the previous relationship, if there was any, between Mr. Parker and Mr. Stegmann.

Q. At the next meeting that you met Mr. Parker, which was two weeks after the first one that you have testified to, didn't Mr. and Mrs. Parker—didn't they both express themselves as being surprised and hurt because of representations by somebody representing Title and Trust to Mr. Wortman that there was a conspiracy between them and Winans?

A. They expressed, I don't know whether you call it surprise and hurt or angry, but they expressed the fact that they stated they did not like the fact that inquiries had been made about them at the bank, and they insinuated that the inquiries had been made, together with derogatory statements, and we assured them at that time that we

(Testimony of James K. Buell.)

had not made or intended to make any derogatory statements about them and that we were sure that Mr. Mears had not. At that time, why, I had not talked with Mr. [1895] Mears or didn't know that he had, in fact, been into the bank, I don't believe.

Q. Didn't they, in connection with that, say that the statements that had been made to Wortman was that the Title and Trust Company thought they were conspiring, that they had been conspiring with Winans to put over this deal?

A. I don't think so.

Q. Did you, during that two-week interval, interview a Kenneth Abraham of Hood River?

A. No.

Q. Who did, do you know, representing the Title and Trust Company, if anybody?

A. I think Mr. Miller at Hood River had talked very briefly with Mr. Abraham.

Q. Did you thereafter interview Mr. Abraham?

A. Yes.

Q. When was that?

A. That was in the latter part of October.

Q. Latter part of October, and at that time did you state to Mr. Abraham that the Title and Trust Company were suspicious that there was a conspiracy between Winans and Parker?

A. Would you repeat that?

(Last question read.)

A. No, we did not make a statement to that effect.

(Testimony of James K. Buell.)

I would like to go on further to state that I believe we [1896] did tell Mr. Abraham that we were suspicious that a full disclosure had not been made to us because of the fact we could not understand why Mr. Parker would not accept the \$110,000 settlement that we had offered and permit us to go ahead with the suit for rescission against the Winans family.

Q. Was Parker's option, as you understood it, through the Winans family or through Stegmann or just——

A. Well, going back to the first meeting that I had with Mr. Parker on September 27th, Mr. Parker on that day stated that he, it didn't care so much to him as to whether he sued Winans in his name or not, but that he couldn't see any reason or any way in which Mr. Stegmann could be brought into it, and he advised us that it seemed to him that Mr. Stegmann had an option to sell, and he bought it, and that is all there was to it. I explained to him that insofar as Stegmann was concerned that a suit would not be as strong as against the Winans but that it would be based on mutual mistake.

Q. Was that not largely a discussion among the attorneys and that Dashney explained that he and the Marsh brothers thought that you did not have any case against Stegmann, but you did have a case against Winans?

A. I think Mr. Dashney may have—he may have made such a comment or have joined in the discus-

(Testimony of James K. Buell.)

sion with such a comment also, but I am quite sure that Mr. Parker made the same affirmative assertion himself, that he didn't see how there [1897] could be any suit against Stegmann.

Q. What I would like to know was whether or not Parker was making that as of something which he had thought up himself or whether he was making it as something that his attorneys had told him?

A. Well, I couldn't answer that.

Q. At any of these—at either of these two meetings that you attended, did Mr. Parker make a statement substantially to the effect that he did not think that the Winans would sell him this property if they did not own it; that he had met Miss Winans and he was rather certain that she would not do that?

A. Did you say if he didn't think that he owned it——

Q. That the Winans would not sell him this property if they did not think that they owned it; that he had met Miss Winans and he was rather certain she would not do a thing like that?

A. Well, I don't recall his making any such statement in words of the general terms that you used. There was a considerable discussion by Parker and myself and Mr. Alstadt and Mr. Dashney and surprise that such a sale could have been made in view of the prior history of the loss against Pacific Abstract & Title Company.

By the time of my first meeting with Mr. Parker,

(Testimony of James K. Buell.)

we had obtained that file and had seen that Mr. Winans and Miss Winans knew all of the details about the defect in the title. [1898]

Q. Yes, that is what you knew, yes, and I am speaking whether or not Parker did not make some comment to the effect that I have just stated?

A. That they would not have attempted to sell it unless they thought they had good title?

Q. That is correct, something of that kind.

A. There might have been some comment made along that line.

Q. Did you ever show Mr. Parker the file?

A. Yes.

Q. The Winans file? A. Yes.

Q. What was the occasion of showing him that file?

A. The occasion of showing it to him of which I am positive was at the meeting on about October 11th in my office.

Q. Yes?

A. I do not think that we had the file with us at the meeting with Mr. Dashney on September 27th. I think it was in the process of being photostated at that time, and we told Mr. Parker of the letters that were in the file, and Mr. Dashney told Mr. Parker at that time that he had seen the file when we had been down the preceding Tuesday.

Q. All right, then, at that time did Parker seem surprised? A. Surprised——

Q. Surprised to learn that the Winans knew about this defect when they sold the property?

(Testimony of James K. Buell.)

A. He expressed some surprise. [1899]

Q. All right, then, on October 12th, or that meeting thereabouts, that was in your office, was it not?

A. Yes.

Q. What did you show him—was Mrs. Parker there? A. Yes.

Q. Did you show them both that file then?

A. You mean as in a sense of taking it and for us showing it to the one and then the other? I do not believe so. Mr. and Mrs. Parker were sitting next to each other right next to Francis Marsh, and we showed it to them generally.

Q. Did they seem surprised when they saw the letter from Miss Winans to the title company that was in the file?

A. Well, there was—we all, as I said, went through the same discussion that we could not conceive how anybody would attempt to sell a piece of property for that amount of money in view of their knowledge of the circumstances without making a disclosure of their knowledge.

Q. Yes.

A. And Mr. Parker had told us that he did not know anything about the state of the title.

Q. Well, now, to get back to the question, did Mr. and Mrs. Parker express surprise when they read the letter from Miss Winans to the title company that is in evidence in this case?

A. Well, as I say, they did.

Q. They did. I do not think that you said it before. It was, [1900] therefore, after you had had

(Testimony of James K. Buell.)

these conferences, these four conferences, and after you had investigated Mr. Winans by going, having somebody go down to the bank and you going to Hood River——

A. We had not investigated Mr. Winans.

The Court: Are you referring to Mr. Parker, Mr. Jaureguy?

Mr. Jaureguy: I meant Mr. Parker. I apologize to everybody for making that mistake.

Q. It was after you had investigated Parker through the bank at McMinnville, through his former attorney, Kenneth Abraham, in Hood River, that you prepared the complaint in this case?

A. Well, that leaves out a large number of important circumstances that led up to the filing of the complaint, but the complaint did follow some of the events that you outlined.

Q. Are there any events that I outlined that the complaint did not follow?

A. Well, I think——

Q. Well, you said——

A. I do not think I understand the question there.

Q. You said that the inquiries of the McMinnville bank were between your first and second meetings with Parker. You said that your conference with Kenneth Abraham was the last of October?

A. Yes.

Q. The record shows the complaint was filed on November 27th. [1901]

A. Yes.

(Testimony of James K. Buell.)

Q. How long before you filed it did you prepare it?

A. Well, I think that—if I recall, it was filed within one or two days of the time it was in final form.

Q. Yes, so there was nothing—then I will ask you this: In the interim, what other investigations did you make about this transaction?

The Court: Go ahead and tell him. That is what Mr. Buell has been complaining about all the time in your questioning. He has not been permitted to tell what facts intervened.

Mr. Jaureguy: I certainly asked the question now that gives him the opportunity to tell it all.

The Court: Go ahead.

The Witness: First we had not made an investigation of Mr. Parker in the sense of any detailed examination into his background or anything like that. We had made one or two inquiries as to what people in the McMinnville area knew of any previous relations between himself and Mr. Stegmann, and the reason that we did that was that in the course of the first meeting that I had with Mr. Parker, the question had been generally raised as to what transactions he had been involved in with Mr. Stegmann in the past, and the only—there was not any detailed questioning. The only thing that he stated about it was that he had had this—the fact that he had a mortgage on Stegmann's house was discussed, and after that [1902] first meeting when we went back to the title office, we were run-

(Testimony of James K. Buell.)

ning a quick check on the index under the name of Stegmann and found the record of the Gopher Valley mortgage which, which seemed strange to us since he had not mentioned anything about it that afternoon.

We then had a title search—not a title, but a judgment and property search made on Mr. Stegmann and had a few inquiries made and also attempted to contact Mr. Stegmann personally, but that was the extent of the investigation into Mr. Parker or Mr. Stegmann.

Q. Well, what investigation did you make in Hood River?

A. In Hood River we talked with Mr. Abraham, and we had done that because of the fact that Mr. Parker, although I believe it was Mr. Francis Marsh or Gene Marsh who first advised us, that Mr. Abraham had advised Mrs. Parker that Paul Winans had told him about some defects in the title after the deed had been delivered and the money paid, and we went to see Mr. Abraham about that. We also went up to the——

Q. That is, you knew then, before you went to see Mr. Abraham, that Mrs. Parker had stated that when he brought the deed back, at least after he brought the deed back, and that same day he had told her of what Winans had said about the possible defect in the title, you knew that before you went to talk to Mr. Abraham, that she had made the statement?

(Testimony of James K. Buell.)

A. Well, we didn't know it in the sense of, with any detail [1903] as to what had occurred.

Q. Yes?

A. We knew that, just the slight or the simple facts that they had related to us that Mr. Abraham had mentioned Mr. Winans advising him of some defect in the title.

Q. Then you went and saw Mr. Abraham in the latter part of October? A. Yes.

Q. And discussed with him his connection with the deal? A. Yes.

Q. Did he remember then that he had told her that? A. That he had told her that——

Q. Yes. A. Yes.

Q. He remembered that without being prompted? You heard the testimony that he later, that he had overlooked the fact that he had said that?

A. Which version of his recollection are you referring to now? I can put it this way: When I went in to see Mr. Abraham he told me substantially what he testified on the witness stand.

Q. Yes, including the fact that after he came back from getting the deed he told Mrs. Parker the Winans had said something about a possible defect in the title? A. Yes.

Q. Including that, yes, and then what further investigation [1904] did you make in Hood River at that time?

A. We went up to the Parkdale Ranger Station that day. This is when Mr. Alstadt and I were together.

(Testimony of James K. Buell.)

Q. Yes?

A. And talked with Ranger Holtby, but could not obtain much information from him.

Q. Did you look at any of the records up there?

A. We saw their status book, as they call it.

Q. Did you see a notation that two men had been up there on August 13th? A. No.

Q. You did not see that?

A. Did not see that was there at all, didn't see Mr. Parrott or Mr. Petersen that day, I think.

Q. Who did you see that day?

A. I think we did not see Mr. Parrott or Mr. Petersen that day.

Q. Yes, I understand, but who did you see?

A. Mr. Holtby, the District Ranger.

Q. Of course, it was after the four conferences—well, the two that you attended—that you made this offer that is in evidence by a written form of contract, by the two written forms of contract?

A. No.

Q. After the conferences you had with Mr. Parker that you testified to? [1905]

A. No, as I recall, the last offer was submitted to Francis Marsh on October, by letter of October 15th.

Q. The last conference was October 11th or 12th, you said, yes, and at that conference you submitted one of your forms of contract?

A. That is correct.

Q. And then a few days later you submitted a different one?

(Testimony of James K. Buell.)

A. We submitted, to waive continuity, on September 27th we arrived at a tentative agreement.

Q. That was all?

A. All, and I had prepared or was half way through preparing a draft of that agreement when I received a telephone call from Mr. Dashney advising that Mr. Parker had either been in or had called him, I forget which, and did not want to go ahead with that agreement, and stated—Mr. Dashney advised me that Mr. Parker had stated that he did not want to sue Stegmann and that Mrs. Parker was either having some sickness or trouble, and they just preferred to settle on the basis of failure of title to the 40 acres, and we could go ahead and do what we wanted.

Q. Yes?

A. Then we arranged — Mr. Dashney advised that he did not want to proceed further because they were primarily Francis' clients, Francis' or Gene's, and he would rather wait until they got back. [1906]

I went ahead and prepared a smooth draft of that contract in our office to submit to them again when we had our next meeting, which I did.

Q. Which you did?

A. And at that meeting we arrived at another tentative oral agreement for the settlement by payment of \$110,000 cash and ten thousand three hundred at the time of the final decree.

Mr. Francis Marsh called me from McMinnville late the following day, which was a Saturday, to

(Testimony of James K. Buell.)

advise that he had been instructed to withdraw that offer also. I went ahead and prepared a smooth draft agreement in accordance with the terms that we had orally agreed upon on Friday, the 11th or 12th, and submitted it on October 15th, I think is the date, but somewhere in that vicinity, submitted it to Mr. Marsh and told him that we would renew the offer in that form. Then I think possibly the rest of the transaction is detailed in the correspondence between the Marsh brothers and my firm.

Q. Did you understand that the — insofar as their refusal to contract was based because they did not want to sue, was that because they did not want to sue Stegmann or just because they didn't want to sue in their name anybody that they wanted you to sue in your own name?

A. I was advised that their reason for not wanting to go ahead with the first contract was that they did not want to sue Stegmann. At the second meeting, the question of suing Stegmann [1907] was not discussed so much, and Mr. and Mrs. Parker just simply repeated the stand that they did not want to sue in their own name, and it was not a question of not wanting to sue any particular person.

Q. But you had never had any question but what the question of the right or the lack of right to sue Stegmann was something that the Marshes and Dashney felt was—I will start over again—that the Marshes and Dashney were of the opinion that there was no legal right to sue Stegmann because

(Testimony of James K. Buell.)

all they had from him was an assignment of an option?

A. Well, they felt that that was a weak case, and I was inclined to concur with them.

Q. You did not disagree too strongly with them, did you?

A. I thought we could spell out a cause of action based on mutual mistake.

Q. You will recall that in the original complaint, aside from a statement, general statement in very general terms, that they didn't—Mr. Parker didn't perform the obligations on his part—you do not allege that he had any notice of this defect at all?

A. Yes, I think——

Q. Up to a point just prior to about, until after he paid the entire consideration?

A. I believe you will find an allegation that at the time of the transaction they had notice of the claim of the Government. [1908]

The Court: Who had notice?

Mr. Jaureguy: You have made two allegations.

The Witness: Referring to the Parkers.

The Court: Is that the complaint that was filed, you mean?

Mr. Jaureguy: The original complaint.

The Court: Or the second?

Mr. Jaureguy: No, the original complaint. That is in paragraph——

The Witness: I think maybe I could find it.

Mr. Jaureguy: Twenty-five. You allege that none of the Winans advised the Parkers or Steg-

(Testimony of James K. Buell.)

mann of the fact of, or the basis of the claim until after the execution and delivery of the deed. Do you remember that? A. Yes.

Q. Then, paragraph 27, you allege that prior to the issuance of a policy of title insurance set forth in Exhibit E—that is your own policy—defendants Chet Parker and Lois Parker knew of the claim of the Government. Aren't those the only two allegations you make?

A. As I recall, I think those are the only two without going into making the detailed steps, but I cannot recall offhand any others.

The Court: What is the relevancy of this testimony, Mr. Jaureguy?

Mr. Jaureguy: Well, that after they made all these [1909] investigations, they still come to this conclusion that Parker is entitled to recover. That is substantially what it means.

The Court: Under the Federal Rules, they did not even have to spell it out with such particularity, which they actually did. These are notice pleadings, and the mere fact that they could not have been acquainted with all of the facts at the time the complaint was filed does not preclude them from relying on all the evidence adduced at the trial.

Mr. Jaureguy: That is not the purpose of this examination at all, your Honor. I do not question the sufficiency of it. As a matter of fact, it has been superseded by a later one, but I am just showing that——

The Court: Are you claiming estoppel?

(Testimony of James K. Buell.)

Mr. Jaureguy: No, I am not claiming estoppel. This is merely prior statements by this witness who prepared this document.

The Court: Go ahead.

Mr. Jaureguy: But I think I am through with it anyway.

The Court: Go ahead.

Mr. Jaureguy: That will be all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan:

Q. When this offer was made of—what was the offer you made, \$110,000? [1910] A. Yes.

Q. And the balance was to be paid at the conclusion of the action or at the time of filing the suit?

A. No, at the time of the final decree.

Q. At the time of the final decree. That would have made the total number of \$125,000?

A. That would have made the sum of \$120,300.

Q. You at no time made an offer to pay the full amount of the policy? A. No.

Q. Without any stipulation? A. No.

Q. Was there any discussion about how this \$110,000 was going to be paid? Was there cash available for that?

A. Yes, cash would have been available. It was to be paid as is noted in my letter to Mr. Marsh. The time of payment was left blank in the contract, and I instructed Mr. Marsh that upon signing of

(Testimony of James K. Buell.)

the agreement by Mr. and Mrs. Parker, to fill in the date for payment of the \$110,000 two weeks following the date of their signing of the agreement

Q. But in view of the fact that they would not sign this contract, no tender was ever made of that amount of money? A. No.

Q. Did the Parkers demand or ask for payment in full of the face of the policy? [1911]

A. After the negotiations had broken down, they made, through their attorneys, made an allegation or statement that the amount of their damage was in excess of \$125,000, but offered to settle for, I think it was \$110,000.

Mr. Jaureguy: That is in evidence, I think, isn't it?

The Witness: Yes, everything between our firm and the company and the Parkers following October 12th was correspondence between my firm and Mr. Marsh.

Q. (By Mr. Ryan): It was your understanding at the time the contract was paid that they were seeking payment of the face of the policy, and a preferred contract was written?

The Court: Well, let us assume that. Go ahead.

Q. (By Mr. Ryan): Did you ever in your investigation——

The Court: I do not see that it makes any difference.

Mr. Jaureguy: I doubt if it is true. It might have been—I don't think they even discussed it.

(Testimony of James K. Buell.)

Q. (By Mr. Ryan): Did you ever contact Mr. Stegmann during the course of these investigations?

A. Mr. Mears contacted Mr. Stegmann by phone. He was never able to contact him personally on person-to-person, in person.

Q. Did he talk with him on the phone?

A. Yes.

Q. Was Mr. Stegmann asked any questions that you have knowledge of?

A. Was he asked any questions? [1912]

Q. Yes. A. Yes.

Q. What was he asked?

The Court: Do you want to have all this hearsay go into evidence?

Mr. Ryan: No, I will withdraw it.

The Court: It can come in if you keep asking it.

Mr. Ryan: No, that is the extent of my questioning.

The Court: Mr. Strayer?

Cross-Examination

By Mr. Strayer:

Q. Is there anything further Mr. Buell, that you think should be related regarding these conferences of the investigations you made?

A. No, I cannot think of anything offhand.

Mr. Strayer: I have no questions.

The Court: Mr. Krause?

(Testimony of James K. Buell.)

Redirect Examination

By Mr. Krause:

Q. Mr. Buell, I have neglected to follow up with that second meeting where you met with Mr. Parker.

Did Mr. Parker on that second meeting that you had with him say that he had met Winans on any other occasion than the one that he had referred to in his first meeting with you?

A. No, he didn't. [1913]

Q. Did he say anything regarding any representations made by Winans in addition to the statement he had made before that he knew nothing of any defects?

A. Nothing further was said about it at the second meeting.

Q. Did you ever get any statement in writing from Mr. Parker before the suit was commenced as to his connection with the whole deal?

A. No, we did not.

Q. Did you try to get a statement in writing from him? A. No.

The Court: What is the number of the contract, the proposed contracts?

The Witness: I think it is 8, 9, 10 and 11.

The Court: Are they in evidence?

The Witness: Yes.

Q. (By Mr. Krause): Did you tell Mr. Parker that this information that you sought from him as

(Testimony of James K. Buell.)

to what Winans had represented or what Parker had known about the condition of the title was to be used by you in a lawsuit that would involve the Winans? A. Did I tell Mr. Parker that?

Q. Yes. A. Well——

Q. Maybe I can make it a little clearer. Your information that you were eliciting from him as to what Winans had said to him or represented and what he knew about the condition of [1914] the title, good or bad, that that information was needed by you in the preparation of a complaint that would be brought against the Winans? A. Yes.

Q. That you informed him of? A. Yes.

Mr. Krause: That you, I think that is all.

Recross-Examination

By Mr. Jaureguy:

Q. At what conference did you inform him of that?

A. The one on September 27th with Mr. Alstadt and Mr. Dashney.

Q. That is the first one?

A. Yes, we also discussed at that meeting in considerable detail Mr. Parker's residence, as to whether or not it would support a suit based upon diversity of citizenship in the Federal Court, in considerable detail.

Q. There is in evidence, I think, a letter you wrote subsequently asking for that information?

A. There is; that is right.

(Testimony of James K. Buell.)

Q. You asked him orally, and then you asked him to state it in writing, too?

A. Some of the—we did not ask him for all of the information contained in the letter that you refer to; however, we generally asked him how long he had resided in Vancouver, and Mr. Dashney went to the files of Marsh & Marsh and got [1915] out their file and Mr. Parker's—I think his mother's—or some member of his family's estate that had been recently probated to ascertain in there that his residence was stated as being in Vancouver.

Mr. Jaureguy: That is all.

Mr. Krause: We have nothing further.

The Court: Was Mr. Parker given a copy of Exhibit 9, also 8 and 7, any one of these three contracts?

Mr. Strayer: If I can interrupt for a moment to remind you, Mr. Buell, one of those is a draft that has no front page.

The Court: Yes, I see that. Seven is the first proposed contract and nine is the second proposed contract. Had you handed that to the Parkers, or copies of either of those, these agreements?

The Witness: I had handed it to Francis Marsh at the meeting in our office, and he and Mr. and Mrs. Parker went into Mr. Griffith's office which was vacant at the time and were in there, went over it a period of about 20 minutes, I think.

The Court: Did they object to any of the language in the contract itself?

(Testimony of James K. Buell.)

The Witness: No, other than the provision for suing, they didn't want to sue in their names at that particular meeting.

The Court: Did either of the Parkers affirmatively represent that the recitals in the agreement were correct?

The Witness: No, there was no detailed discussion of the [1916] recitals at the time.

The Court: That is all.

Recross-Examination

By Mr. Jaureguy:

Q. As a matter of fact, there was no discussion of the recitals at all, was there? A. No.

Q. You said no detailed discussion. I wanted to get that straight.

A. Well, I am satisfied there was not any discussion of the recitals, as such.

Q. In other words, Mr. Marsh and the Parkers came out where the rest of you were and discussed their objections to it and their objections were twofold, as I recall, and I think we have gone over them, and that discussion did not involve recitals, and you do not know at all, do you, except what you might have gotten from the deposition, that Mr. and Mrs. Parker knew anything about the recitals when they came out?

A. Knew anything about the recitals?

Q. Knew what the recitals were in the contract?

A. No, I have no first-hand knowledge.

Mr. Jaureguy: That is all.

(Testimony of James K. Buell.)

Recross-Examination

By Mr. Strayer:

Q. Mr. Buell, I think you had better straighten the record out [1917] on just what those three contracts are. It is pretty confusing.

A. If I could have either a list of the exhibits——

The Court: Take them all.

(Documents tendered to witness.)

A. Exhibit Number Seven is the first draft of the first proposed contract and has some minor pencil corrections in it which were in Mr. Griffith's handwriting. That is the agreement with the first page on it. Exhibit Number Eight is a smooth draft of the first proposed agreement which was submitted to Mr. Marsh and Mr. and Mrs. Parker at the time of the meeting on October 11th. It does not have a first page because the first page on the the rough draft agreement was used on both, so there was only one for each or for each of the two. Exhibit Number Nine is a copy of the second proposed contract, and the original draft of that was forwarded to Marsh & Marsh.

The Court: Was there any discussion with Mr. and Mrs. Parker to the effect that in a title suit they could not prevail unless there had been a misrepresentation made to the Parkers? In other words, if the Parkers knew of a defect, then Title

(Testimony of James K. Buell.)

and Trust could not prevail if it filed the action, the suit?

The Witness: I do not recall it being stated as bluntly as that. They were both advised that the basis of the suit would be misrepresentation of the state of the title by the Winans or a concealment of their knowledge of the defect.

The Court: In other words, through these negotiations you [1918] assumed that the Parkers had no knowledge of the defects?

The Witness: That is right.

The Court: And it was on that basis that you were negotiating?

The Witness: And also that Mr. Stegmann had no knowledge of the defect.

The Court: And the suggestion to make Mr. Stegmann a party defendant was to recover the \$25,000 from him on the ground that neither the Parkers nor Stegmann were aware of the defect, and, therefore, they were both dealing under a mistaken, under an assumption that the title was good?

The Witness: Yes.

The Court: In other words, you tried to void that contract for mutual mistake of fact?

The Witness: Yes. With regard to the preference to sue in the Parkers' name rather than the title company's, I believe I explained to Mr. Parker, I am sure but I am not sure at which meeting, that the reason that we preferred to sue in his name rather than in the company's name alone was that we felt that the strongest case for, was for re-

(Testimony of James K. Buell.)

seission which would involve a tender back of the title to Government Lot 1; that a case against the Winans family just based upon failure of title to the 40-acre tract where we would be in a position of trying to affirm part of the contract would not be as strong a suit.

Mr. Strayer: May I ask a question, your [1919] Honor?

Recross-Examination

By Mr. Strayer:

Q. One thing that occurs to me, Mr. Buell, which you may have overlooked and it may be of some significance if the Court were to have an explanation of the reason for the change, I think your first agreement was for the payment of \$90,000. Then it went up to \$110,000 the second agreement. Will you explain that to the Court?

A. Well, under the first agreement, if we were unsuccessful in rescinding the transaction, then Mr. Parker was to retain title to Government Lot 1 at the stated valuation in the assignment of the option of \$35,000, and in the first meeting that I had with him, he stated that he felt that \$35,000 was a fair value of Lot 1.

Then in the second meeting in my office when Francis Marsh was present, Mr. Parker raised the question that he didn't think that the Lot 1 was as valuable or could be credited with a value of \$35,000 valuation because it would not be economically as feasible to log it in the absence of the 40-acre tract, and so under the second proposed agree-

(Testimony of James K. Buell.)

ment he was to be indemnified for all of his out-of-pocket loss, and if the suit for rescission or whatever suit we brought failed, why, the title company was to get the title to the Government Lot 1 and dispose of it as best they could.

Mr. Strayer: That is all. [1920]

Recross-Examination

By Mr. Jaureguy:

Q. You recognized, too, Mr. Buell, did you not, that both practically and legally an indemnitor's right of subrogation is not identical with an indemnitee's original action, that is, that your right of subrogation might fail even though the Parkers, if they sued, themselves, might be entitled to prevail?

A. Well, that is always a hazard in subrogation; that is true, and I was aware——

Q. Both as a legal proposition and also as a practical matter?

The Court: Well, if he didn't know it before, he knows it now since you have told him.

The Witness: I knew it at that time.

Q. (By Mr. Jaureguy): You knew it at that time?

That is all.

(Witness excused.) [1921]

HERBERT ALSTADT

called as a witness in behalf of Third-Party Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. Herbert Alstadt.

Q. And your business?

A. Vice-president, Title and Trust Company.

Q. Are you a lawyer admitted to practice law, Mr. Alstadt? A. I am, yes.

Q. And many times you advise lawyers on title questions, don't you? A. Yes.

Q. Mr. Alstadt, when did you first become acquainted with Mr. Parker, that is, Chet Parker?

A. With Mr. Parker?

Q. Chet Parker, yes.

A. On September 20, 1951.

Q. Where did you meet him?

A. At McMinnville, in the office of Marsh, Marsh and Dashney.

Q. Was Mrs. Parker there that day?

A. She was not.

Q. Who else was present at the time that you talked to Mr. Parker? [1922]

A. Mr. Dwyer and Frank Marsh, I believe.

Q. Mr. Dwyer is the Ed Dwyer who is president of the Title and Trust Company?

A. That is right.

Q. Did you at that time ask Mr. Chet Parker

(Testimony of Herbert Alstadt.)

how many times he had met Paul Winans or any of the Winans who were the sellers of this property?

A. I believe that that question was asked at that time. Yes, it was asked, I also think later, but on the first meeting we asked if he knew Mr. Winans. That is the way the question was put.

Q. What did Mr. Parker answer?

A. He said that he had met him once on a survey party up to the Lost Lake tract.

Q. On the subsequent meeting the 27th of September, you were there, too, were you?

A. I was.

Q. Do you recall whether that same statement was made while Mr. James Buell was also present?

A. I think it was, yes. I am sure it was because that meeting was more or less of a rehash of the first meeting.

Q. At either of these meetings, Mr. Alstadt, what, if anything, was said by Mr. Parker with respect to whether or not he knew of any defects in the title at the time he took, received the deed to this property? [1923]

A. Well, to my knowledge I don't believe he was asked that question.

Q. While you were present?

A. That is correct.

Q. Are you talking about the first meeting now?

A. The first.

Q. Or both meetings?

A. Or the third.

(Testimony of Herbert Alstadt.)

Q. Well, I am thinking only of two meetings, the 20th and the 27th, at the moment.

A. Yes, I am sorry, the 20th and the 27th; that is correct, those two meetings.

Q. 20th and 27th? A. Yes.

Q. Did Mr. Parker make any statements with respect to whether or not any communication had been made to him by any of the Winans regarding the condition of the title?

A. Mr. Parker, no, he didn't make any statement to that effect.

Q. That you heard?

A. That is correct, that I heard.

Q. Were you present in these meetings during the entire time that Mr. Buell was in there, at the second meeting?

A. At the second meeting, I am sorry if I got confused because I have four meetings to think of. That second meeting that you speak of is the third one that I have in mind. That is the [1924] one on the 27th.

Q. That is the one on the 27th? A. Yes.

Q. What I was asking you about now is whether you recall any statement made by Parker as to whether any disclosures or representations of title had been made to him by any of the Winans?

A. No, I do not recall at all any statement to that effect.

Q. Do you recall whether you were present at all times in that meeting when Mr. Buell was talking to Mr. Parker?

(Testimony of Herbert Alstadt.)

A. I left that meeting for a short time to make a phone call. That was just before five o'clock.

Q. At any meeting that you had with Mr. Parker and/or Mrs. Parker, did they, or either of them, make any statement to you, first of all, as to whether or not they had knowledge of any defect in the title to the forty acres?

A. No, they did not.

Q. They made no statement to you about that?

A. No.

Q. Did they make any statement to you as to whether or not any representations had been made to the sellers?

A. No; no representations at all.

Q. They did not claim any representations?

A. No.

Q. Do you recall whether it was specifically asked as to [1925] whether any representations had been made by the sellers?

A. I don't recall it being asked at all, no.

Q. You don't recall it. Now, those questions, of course, relate to any meeting that you had with the Parkers.

At any subsequent meetings, did they make any statements to you, either that they knew nothing about the defects in the title or that representations had been made to them that the sellers had good title?

A. No, Mr. Krause, they made no statements

(Testimony of Herbert Alstadt.)

whatsoever along that line because I think we all assumed that they knew nothing about the defect in the title.

Q. It was assumed that they did not know about it? A. That is correct.

Mr. Krause: I think you may cross-examine.

Cross-Examination

By Mr. Jaureguy:

Q. Was there anything that happened at any of those meetings that convinced you that up to that time they did not know, they had never learned that the Winans knew of this defect of title?

A. Well, at the first meeting, Mr. Jaureguy, Mr. Parker told us that he was familiar with the failure of school lands. He knew about the fact that a school land would fail, or school land title would fail if it had not been completely surveyed.

Q. Well, now, did he expand on that, or was that in answer to questions? [1926]

A. No, it was not, it was in the general discussion. As a matter of fact, at that time he said that he also carried a Metsker map in the back of his car and that he checked on whether or not a school land section had been surveyed.

Q. Go ahead, answer my question.

A. Didn't I?

Q. No.

A. I am sorry. Would you ask the question again?

Q. Whether or not anything occurred that con-

(Testimony of Herbert Alstadt.)

vinced you that when Chet Parker purchased the property, or when he first met you he was convinced that the Winans did not know anything about a defect in title? A. That he was convinced?

Q. Yes.

A. No, I don't think the question was asked.

Q. Do you remember as to whether or not the correspondence between the Winans and the Pacific Title Company was ever shown to the Parkers?

A. Yes, it was.

Q. When was that?

A. It was either at the first or the third meeting.

Q. Don't you think that could have been at the fourth?

A. It was also shown at the fourth. It was shown twice.

Q. You think it was shown twice?

A. I know it was because I had it with me when I went to [1927] McMinnville, and on the way back I became apprehensive about carrying around this file. I took it out of the car and took it directly over to the photostat people and had copies made so I would not lose the file, and that was on the return from one of those trips to McMinnville.

Q. What was the occasion of showing it to the Parkers?

A. We did not know where we were in this case, and we wanted to show him that there was a failure of title and that there was previous knowledge of this failure by the Winans.

Q. Did their reactions convince you that the

(Testimony of Herbert Alstadt.)

Winans never had told them about the defect of title? A. Yes.

Q. Just tell us what that was.

A. Well, I don't believe anything was said particularly. Mr. Winans looked somewhat surprised.

Q. Mr. Winans?

A. I mean, pardon me, Mr. Parker seemed surprised at the fact that there had been a previous claim, that there had been a settlement on the claim by Pacific.

Q. Well, I think the way you expressed it at the deposition was that by inference he told you they had never told him, and that inference was based on a surprised look on his face when he saw the correspondence.

A. I just said he looked surprised.

Q. Yes, would that express your thoughts on the matter? [1928] A. That is right.

Q. Would you say the same thing about Mrs. Parker? A. Yes.

Q. That when she saw it I think you said she was very, had a pronounced look of surprise?

A. That is correct.

Q. So that while they didn't expressly say anything to you or represent to you and you didn't ask them; nevertheless I take it that their reactions to seeing the correspondence made it clear to you that they never knew anything about the defect of title when they purchased the property?

A. It gave us that impression.

(Testimony of Herbert Alstadt.)

Q. And rather a pronounced impression; was it not?

A. Well, I can remember it more distinctly as far as Mrs. Parker is concerned than I can Mr. Parker.

Q. She was surprised; she was astounded; is that the way you put it?

A. I don't know whether I used those words or not.

Q. Now, at this third, at what you think of as the fourth meeting, but it was the third meeting when the Parkers were present, that was up in the office of Griffith, Phillips & Coughlin?

A. Yes.

Q. What reasons did the Parkers give for not wanting to sign the contract? [1929]

A. One of the reasons was that Mr. Parker more or less resented our investigating him, and the other one was that he didn't want to sue Stegmann.

Q. Didn't want to sue Stegmann?

A. Didn't want to sue Stegmann.

Q. Wasn't their attitude that they didn't want to sue anybody; that they thought that you ought to sue?

A. Well, I think that they always contended that, yes, right from the start.

Q. Yes, well, I think that Mr. Buell in his opening statement said their attitude there at the beginning was not particularly that they didn't want to sue Stegmann but they just didn't want to

(Testimony of Herbert Alstadt.)

sue anybody, but you think that it was really that they didn't want to sue Stegmann?

A. That was one of the reasons advanced.

Q. But the other reason advanced was that they claimed that you had made false charges against them to the officers of the First National Bank; was that it?

A. I never heard that statement made, no.

Q. What was it?

A. He just simply resented the fact that we were investigating him.

Q. Didn't they refer to the First National Bank of McMinnville?

A. Not particularly, as far as I am concerned, no.

Q. Didn't they refer at least to insinuations that were being [1930] made that they had been in a conspiracy with Winans? A. No.

Q. But, at any rate, they resented the investigations? A. That is correct.

Q. And didn't they—and that those two reasons were given for not wanting to sign a contract with Title and Trust Company?

A. That is as far as my memory goes on it, yes.

Q. Didn't they make a statement that they understood that under their contract they were entitled to be paid directly and didn't have to be made parties to lawsuits?

A. I don't recall them making that statement, no.

(Testimony of Herbert Alstadt.)

Q. You do not recall. All right, thank you, that is all.

Mr. Ryan: I have no questions.

Mr. Buell: We have none.

Mr. Krause: We have nothing further.

The Court: That is all.

(Witness excused.) [1931]

Mr. Krause: We will call Mr. Chet Parker. He is our last witness.

CHET L. PARKER

recalled, having been previously sworn, testified as follows:

Direct Examination

By Mr. Krause:

Q. Mr. Parker, what is your net worth?

Mr. Jaureguy: Objected to as incompetent, irrelevant and immaterial, no foundation laid.

The Court: Objection overruled, Mr. Jaureguy, there is an allegation of punitive damages here.

Mr. Jaureguy: My objection is on the ground that the allegation is not sufficient. There must be some foundation laid of some malice or other conduct that warrants, at least is evident, warrants punitive damages.

The Court: Well, I am not going to pass on the sufficiency of the evidence now. Objection overruled.

Mr. Krause: Go ahead, please, Mr. Parker.

The Witness: Well, I suppose that would de-

(Testimony of Chet L. Parker.)

pend on several things. One is the money that I gave your clients, what happened to that, whether I have any of that coming. Number 2 is whether the front lot has a good title and whether some of my assets are, could turn into cash, and so [1932] forth. Now, I could put limitations that would be helpful to you, I think, to make this short and brief.

Q. Well, having in mind that you charged off \$85,000 in your 1951 return of this loss on this property, if you do lose it, then you can go ahead and give us what your net worth is, having that in mind.

A. And taking and considering I get the front lot, right?

Q. You suppose you have title to the, to Lot 1.

A. Oh, I would say possibly a minimum of \$70,000.

Q. Well now, what is the balance owing you on the Bear Creek contract?

A. Oh, they have paid me in full, sir.

Q. You have been paid in full on that?

A. Yes, I have been paid the price I asked.

Q. What do you have on deposit in the banks today?

A. Well, now, I have never been able to, I have never been able to know what it is, but it would not be very much.

Q. Well, give us your best estimate.

A. Well, anywhere from \$50 to 10,000.

Q. You do not know whether it is one or the

(Testimony of Chet L. Parker.)

other? A. No, I don't know at all.

Q. All right, how much money in your safe deposit boxes in cash?

A. Maybe we have—my wife would be able to answer that, I think, but I think that possibly, oh, fifteen thousand maybe. [1933]

Q. Cash in safety deposit boxes? A. Yes.

Q. What other real property do you own?

A. Do you want a list of it right now?

Q. Yes, just—you do not have to give us legal description. Tell us what it is.

A. Well, of course, you know I might omit some from my memory.

Q. We will excuse you.

A. Would that be permissible?

Q. If you will give us your best estimate, your best memory on it, that will be satisfactory.

A. Well, let's see——

Q. First of all, do you have a home?

A. Not a very good one, no, no.

Q. You own a residence, do you?

A. No, I just rent.

Q. You just rent now? A. Yes.

Q. Why did you say first then that you do not have a very good one?

A. What I mean, it is not a very good rental, either.

Q. I see. My question was misleading. Do you still—do you own any residences or any houses in McMinnville? A. No, I do not, sir. [1934]

Q. What about this one that you had the mort-

(Testimony of Chet L. Parker.)

gages on; is that still belonging to Mr. Stegmann and you have mortgages against it?

A. No, I sold it.

Q. You sold it? A. Yes.

Q. All right. Now then, what timber do you own?

A. Well, I think there is some timber, about a million feet on the Pea Vine tract. I have not been on it, but I think there is in snags.

Q. About a million feet on the Pea Vine tract?

A. Well, one man said that someone was logging on it last year, and if that is so, why I do not know if it is there any more. I have not been up there, but it should be there, and it should—there should not have been any logging on it.

Q. Well, what is the stumpage worth, approximately? A. Well—

The Court: Let us forget about the Pea Vine and go into something else.

Q. (By Mr. Krause): What other property besides the Pea Vine timber?

A. Let's see, I own the tract in, at Beacon Rock.

Q. What is its value?

A. I don't know, sir.

The Court: When did you buy it? [1935]

The Witness: Last year.

The Court: How much did you pay for it?

The Witness: Eighty some-odd thousand dollars.

Q. (By Mr. Krause): Is it still worth eighty thousand dollars?

(Testimony of Chet L. Parker.)

A. No; no, I don't think so. Then some of it burned, I had a fire up there, some of it burned. No, it is very speculative. It depends on the market what that thing is worth. It is snags, and what I think it is worth and what it is actually worth is two different things entirely.

Q. We just want your estimate of its value.

A. Well, I suppose what I paid for it would have something to do with it pretty close. I bought it from Herman Tinsler, and he should know what it is worth, and he sold it to me so I certainly must have paid enough for it.

Q. You have how many automobiles at the present time?

A. I think I have a pickup and a car.

Q. What sort of a car? A. Cadillac.

Q. What is its value?

A. I would say probably \$4,000 before my wife knocked the front end off of it.

Q. Do you still have all of the equipment that is listed in your '51 income tax return?

A. I am very doubtful.

Q. Do you have an International tractor? [1936]

A. No, I sold—no, I haven't any International tractor.

Q. What about the Kelso property? Do you still own that?

A. No, I do not have that any more.

Q. You do not have that? A. No.

Q. But you still own the Peterbilt Logging truck? A. Yes, sir.

(Testimony of Chet L. Parker.)

Q. What is its value now?

A. Anywhere from 2,000 to probably 6,000, somewhere in there.

Q. From 2 to 6? A. I am just guessing.

Q. On May 7, 1951, you paid \$6500 for it; is that right? A. Thereabouts, yes.

Q. And the depreciation that you took off for the year 1951 was \$1,354; is that about right for the depreciation?

A. I didn't set it up or anything. I don't know, I suppose.

Q. About 20% of the value?

A. I would imagine.

Q. And the Trombley trailer, do you still have that?

A. Well, it is part of the truck. It is setting on the truck now. I have not used it for the last year. It is still sitting there.

Q. You paid \$2,000 for that on the same date that you bought the Peterbilt?

A. I suppose; I don't know. [1937]

Q. Do you still have the Yamhill County farm?

A. Yamhill County farm? I don't think I ever had a Yamhill County farm.

Q. Well, you list it in your schedule of depreciation in your 1951 income tax return.

A. Well, that is fine. I guess I did then, but I don't know where it is at unless it is that little chicken ranch that I left there. If it is a three-acre

(Testimony of Chet L. Parker.)

piece, why I owned—if that is called a farm, why then I owned it, and I have not got it.

Q. Well, if you have got a chicken house down here that you put down as buying that cost you \$2,500.

A. That must be the three acre piece right on the edge of Mack, that you are referring to. If that is the case, why, I don't own it any more.

Q. On the Yamhill County farm you have got a D-8 cat that you put down at \$13,000. Do you still have that one? A. I do not.

Q. You recognize this Yamhill County farm now, do you, as still being in your possession?

A. No, I do not. It is not in my possesesion. I have sold it. I told you twice now.

Q. You still have that Hood River Log Dump site, do you? A. No, I do not.

Q. You sold that, too? [1938]

A. Yes, I sold it. I don't have it.

Q. Who did you sell it to?

A. I have forgot, Dubois-Matlek, I think it is, at Vancouver, Washington. They are timber people. They needed the timber, and I sold it to them for \$1,500, as I remember.

Q. You have told us about the two tracts, Pea Vine, and this other one that you paid \$80,000 for. What other timber do you own?

A. What other timber do I own?

Q. Yes.

A. Well, I can't remember of any more that I own.

(Testimony of Chet L. Parker.)

Q. You do not think of anything further?

A. No, I can't think of any further.

Q. Any other land that you own that you have not mentioned?

A. No, well, other than the thing at Lost Lake. I can own some of that.

Q. Well, we all have that in mind, and you mentioned it earlier.

A. Well, I believe that is all.

The Court: Do you own any stocks and bonds, government bonds?

The Witness: I believe a few hundred dollars worth, I think, I inherited from my grandmother. I think she left me two hundred dollars worth.

The Court: Is that all the securities that you have? [1939]

A. Of no consequence, less than a thousand dollars or so.

The Court: Have you any loans out?

A. Oh, yes, we got some of those.

The Court: Approximately how much?

A. Oh, golly, I don't know, not to exceed I don't think \$20,000, sir, or 25.

The Court: Are there any other assets that you have?

The Witness: No.

The Court: Is that all, Mr. Krause?

Mr. Krause: That is all.

The Court: Any cross-examination?

Mr. Jaureguy: No cross-examination.

Mr. Ryan: No cross-examination.

(Testimony of Chet L. Parker.)

Mr. Strayer: No.

The Court: That is all.

(Witness excused.)

Mr. Krause: That is our case, your Honor. [1940]

* * *

WALTER L. BRYSON

a witness produced in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows: (Rebuttal Testimony.)

Direct Examination

By Mr. Buell:

Q. Could I have Exhibit 117, please. Mr. Bryson, you are the Secretary of the Multnomah Plywood; is that correct, sir? A. I am, sir.

Q. And you were in August and September of 1951 also; were you not? A. I was.

Q. I will hand you Exhibit 117 which you may want to refer to in refreshing your recollection if you need to, which was a copy of the minutes of the Board of Directors meeting of that co-op August 20, 1951, when Mr. and Mrs. Chet Parker made the proposition to your company for the sale of a tract of timber land up on Lost Lake. Were you present at that board meeting? A. I was.

Q. I believe your signature is on that document, and you furnished that to Mr. Jaureguy?

A. It is.

Q. At his request, did you? A. It is.

Q. Do you recall, or did you yourself ever have

(Testimony of Walter L. Bryson.)

occasion to [1943] meet Mr. or Mrs. Chet Parker following that meeting?

A. I can't recall accurately whether I met Mr. and Mrs. Parker following this meeting or immediately prior to this meeting. My opinion is that it was within the same week that this meeting was held.

Q. Do you have any recollection as to the day of the week that occurred on?

A. In this meeting——

Q. No, I mean the other occasion that you met with Mr. and Mrs. Parker.

A. I think it was Saturday morning of this same week.

Q. Was there anything said at that time about your company making a down payment of any sum to buy up the Parkers' Lost Lake property?

A. I'm quite sure that it was made in the presence of Mr. and Mrs. Parker, but it was made to me that same morning prior to their entry into our office. I think it was prior to, but I don't know whether it was repeated after I had met them.

Q. Who saw you about making a payment, and how much of a payment was suggested?

A. Mr. Clyde Smith, our vice-president and timber buyer.

Q. And how much of a payment was mentioned?

A. Mr. Clyde Smith asked me to have a check made for \$25,000 as a down payment to buy up this timber.

Q. Were you the person that he wanted to sign the check? [1944]

(Testimony of Walter L. Bryson.)

A. Mr. Smith and myself were authorized to sign the checks.

Q. Did you issue or draw such a check?

A. I did not.

Q. For what reason?

A. The Board of Directors had not approved of the purchase of this timber.

Q. Did the company have at that time any other information about this timber or the amount of timber on it other than the reconnaissance cruise that Mr. Kenny had submitted to you?

A. I think about the first time that it ever came to my attention with regard to any cruise on this timber is at this Board of Directors' meeting in which Mr. and Mrs. Parker were present.

The Court: We will have a short recess.

(Recess taken.)

(Trial resumed.)

WALTER L. BRYSON

recalled, testified as follows:

Direct Examination

(Continued)

By Mr. Buell:

Q. I take it then the cruise that was mentioned at that Board of Directors' meeting was the only cruise on the property that you had any knowledge of? A. It is.

Q. At the time Mr. Smith wanted the \$25,000

(Testimony of Walter L. Bryson.)

check as a down payment on this Lost Lake property did you feel that the company [1945] had enough information to act upon the offer of the Parkers at that time?

A. The company did not have enough information to close the deal.

Q. What additional information would you have wanted?

A. We would have wanted to have known what the definite cruise was, what it would cost to log, what it would cost for transportation. We would want to know about rights-of-way. There were a great many items we would wish to know before ever taking any action to purchase.

Q. Is the Mr. Roy Kenny who made that reconnaissance cruise, is he still associated with or working for your company?

A. Not at the present time.

Q. Did he turn over his documents and data pertaining to the timber that he cruised, to your company when he left?

A. That had to do with us, yes.

Q. Have you looked for or had any of your employees of the company search for any data or files of your company pertaining to the Lost Lake property of the Parkers? A. We have.

Q. Have you also looked through Mr. Kenny's files? A. We have.

Q. Did you bring with you all of the documents that you have? A. I have. [1946]

Q. Will you hand those to the bailiff, please.

(Testimony of Walter L. Bryson.)

(Two documents, information on cruises by Roy Kenny, marked Plaintiff's Exhibits 95 and 96 for identification.)

Q. (By Mr. Buell): Going back just one minute, Mr. Bryson, did your company ever acquire any of the additional information that you just mentioned that you would have wanted to have had before completing any deal on the Lost Lake timber, to your knowledge?

A. To my knowledge, no.

Q. Mr. Bryson, Exhibits 95 and 96 are two documents that you just exhibited among the documents that you just produced, and one of them, Number 96, appears to be a report of a cruise, and would you state where you found the document, Number 95?

A. Mr. Roy Kenny kept a separate file for all the accumulated information on cruises and other information that had to do with timber that the Multnomah Plywood Corporation might be interested in purchasing, and that file was turned over to us after his termination of services for the Multnomah Plywood, and this document was among the papers in the file.

Q. In the Kenny file?

A. Roy Kenny file.

Q. Number 96 is apparently the original of Mr. Kenny's cruise of which a copy is also in evidence so we will not offer that. I just wanted it marked so we could exhibit it to counsel.

We will offer Exhibit 95 in evidence. [1947]

(Testimony of Walter L. Bryson.)

Mr. Buell: I have no further questions.

The Court: Mr. Jaureguy?

Cross-Examination

By Mr. Jaureguy:

Q. Mr. Bryson, did Mr. Smith have any particular reason why he thought there ought to be an earnest money or payment down on this Lost Lake property?

A. It appeared that Mr. Smith was anxious to close a deal with the Parkers.

Q. Did he give any particular reason for it? Do you mean to close the deal or cinch a deal?

A. To cinch a deal, I will put it that way. Mr. Smith apparently had been working with the Parkers for some time prior to the Parkers appearing at this Board of Directors' meeting, and the meeting ended by the Board wishing to get a great deal more information. In other words, the Board did not commit themselves.

Q. You mean that is shown in the minutes?

A. That is shown in the minutes, and it was that week, that same week, I am quite sure, that the Parkers were in and that Smith was—had asked me for a check to bind this, but the Board had not approved of the transaction.

Q. I could understand, I understand the reasons why you did not want to give the check, and I was wondering if Mr. Smith gave any particular reasons other than the character of the [1950] sale and what

(Testimony of Walter L. Bryson.)

the, and what appeared to be attractive features of it for thinking that they ought to buy it up as soon as possible.

A. The only thing that I can recall with regard to that was that the Parkers were going on an extended trip.

Q. And he thought that they ought to buy it up before they——? A. That is right.

Q. At least get hold of it before they left?

A. That is right.

Q. Did he say whether the Parkers had asked for a down payment or not?

A. I don't recall that he made that statement to me.

Q. You know about the Bear Creek purchase by Multnomah?

A. Having to do with Mr. and Mrs. Parker?

Q. Yes, purchase of their Bear Creek——?

A. If that is the Nestucca River tract.

Q. I think that is the same one.

A. If the Bear Creek and the Nestucca River tract is the same, Multnomah did purchase the tract from the Parkers.

Q. You did not have any cruise there besides the Kenny cruise and the Smith estimate, did you?

A. That I cannot make a clear statement on. I am not in the timber department.

Q. I see.

A. And if we purchased that tract, that was authorized through [1951] the Board of Directors that we do so.

(Testimony of Walter L. Bryson.)

Q. Subsequent, long subsequent to this transaction Mr. Parker was around and negotiating on at least one other timber matter with the Multnomah? He has been around now and then, hasn't he, still?

A. I think that he has contacted our president, Mr. Johnson, in that regard, but I don't think on any occasion after that that I came in contact with Mr. Parker.

Q. Do you know of any reason why this sale did not go through other than the discovery that the title was not good?

A. I did not make a statement with regard to title.

Q. No, I understand. I am just asking. You have learned, have you not, that eventually it was discovered that the title was defective to this property?

A. I have learned that today, yes, sir.

Q. This is the first time you learned it?

A. That is right.

Q. Was there any other reason that you know of why this sale did not eventually go through, or don't you know anything about it?

A. This deal of the Parkers with Multnomah?

Q. Yes; that is right.

A. I will almost have to repeat myself. The Board of Directors did not authorize the purchase of it.

Q. And so that is the sum total of the [1952] reason? A. Definitely so.

(Testimony of Walter L. Bryson.)

Q. I suppose you knew that Mr. Smith and the Parkers had gone up to your attorneys for the purpose of having the matter drafted into contract form, or did you know that?

A. I am not aware of that.

Q. You knew that Mr. Smith a day or two after the meeting went up to look over the property?

A. I am quite sure that he did, and I think that that was following this meeting.

Q. Yes, and two members of the Board and two logging contractors went up with him; did you know that?

A. I can't recall for sure for certain, but I think there was at least one other Board member went up there.

Q. Thank you very much, that is all.

Mr. Ryan: I have no questions.

Mr. Krause: We have nothing.

Mr. Buell: Nothing further.

Examination by the Court

Q. When did Mr. Smith cease to be a timber buyer for the Multnomah Plywood?

A. I think it was only a short time after this had been presented to the Board.

Q. Was there any correlation between his termination and this deal, any connection?

A. I think not. [1953]

Q. You seem to indicate that there might have been something improper here, and I just wanted

(Testimony of Walter L. Bryson.)

to know if that was true, or did you want to give that impression?

A. No, I did not. I am only trying to make accurate statements and trying to qualify myself. I recall this, if I may add, that at the time that Mr. Smith decided to work in the plant, and he was an experienced sander man, and that is the job that he took in the plant, that Mrs. Smith had been ill for quite a period of time. Timber buying took him out of town a considerable time, and I think that she would—she objected to that a little and would rather have him working right at our plant. At least that is what he did.

Mr. Jaureguy: You did not mean to give the impression here in court that you thought there was anything improper in the actions of Mr. Smith or of Mr. Parker or of Mr. Kenny or of the members of the Board?

A. I did not.

Mr. Jaureguy: Thank you very much.

Mr. Buell: Nothing further.

The Court: That is all.

(Witness excused.) [1954]

LYLE A. CUMMINGS

recalled, having been previously sworn, testified as follows (rebuttal testimony):

Direct Examination

By Mr. Buell:

Q. Mr. Cummings, I neglected to ask you when you testified the other day whether or not you marked out the plots that you actually cruised and counted in connection with your timber cruise of the Lost Lake property involved in this case?

A. Yes, we make a regular system of marking by staking the center of each plot.

Q. Were those stakes left in the ground?

A. Yes, they were. We either drive a stake and mark on the stake or smooth side of a tree and mark on that to indicate the plot center.

Q. So that it would be possible for some other timber cruiser to go back over the property and check your work; is that correct?

A. Yes, it is. We feel that it is advisable to leave a record there so that it can be, in fact, audited if necessary. [1955]

* * *

LOIS PARKER

recalled, having been previously duly sworn, was examined and testified as follows (surrebuttal testimony):

Direct Examination

By Mr. Jaureguy:

Q. You heard the testimony of Mr. Abraham in which, while he did not seem to recall very well, he thought that the conversation that he had in which he told what Mr. Winans said about a defect was while you were still in the court house. Will you explain just when and where that conversation took place?

Mr. Strayer: That is objected to as repetitious, not proper rebuttal.

Mr. Jaureguy: Oh, yes, that is correct. The last point is because I neglected to ask her about that when she was on the stand. I did not put her on the stand and ask her that in our case in chief, and they have put Mr. Abraham on before that so I would like permission now to ask her because that was after—your Honor will recall the circumstances under which he testified, and that is that he admitted a few days before he had told me that he had no recollection of even telling her, and then he took the stand and said that the notes of the attorneys to whom he had given statements indicated that——

The Court: Didn't Mrs. Parker previously testify that the statement was made to her when she was in Mr. Abraham's office? [1968]

(Testimony of Lois Parker.)

Mr. Jaureguy: That is correct.

The Court: Why is it necessary to put her on again?

Mr. Jaureguy: Whether or not his testimony in any way has caused her to change her mind on the subject. Well, I will ask the question whether or not his testimony in any way makes you change your mind as to when and where that conversation took place?

The Witness: No, I have not changed my mind.

Q. You remember that very definitely?

A. Yes.

Q. And you also remember definitely that you went up to see him later and talked to him about it, and he said that he had no recollection about that? A. That is right, he did.

Mr. Strayer: I do not want to be captious, your Honor, but it seems to me this is all improper rebuttal and all repetitions.

The Court: Also leading.

Mr. Strayer: Yes, it is leading.

Q. (By Mr. Jaureguy): Now, were you present at any of the conferences when the attorneys were present that you had learned of the defect of title in which a settlement was being discussed?

A. Yes, I was present at one conference.

Q. At one of them, and where was that? [1969]

A. In Mr. Buell's office in Portland.

Q. And who else were present?

A. Mr. Dwyer and Mr. Alstadt, Mr. Francis Marsh, my husband, Mr. Buell, and myself.

(Testimony of Lois Parker.)

The Court: Who was that last one?

The Witness: Myself.

Q. (By Mr. Jaureguy): What happened when you went in there?

A. I don't remember who greeted us, but Mr. Marsh was given a copy of a settlement or proposed settlement, and we were shown to another office.

Q. You and who else?

A. My husband, Mr. Marsh, and myself.

Q. What happened in there?

A. Well, he read the settlement over and one or two things he asked us, and he said that it was not satisfactory to him.

Q. You say he read it over. Do you mean he read it all to you?

A. Oh, no, he was reading to himself, and he said it was not satisfactory, some things would have to be changed.

Q. What portions did he explain to you, if any?

A. I don't believe he explained any to us.

Q. Did he explain to you how much was to be paid you and when and that they wanted you to sue?

A. Well, yes, I think he told us all about that, and we still had to sue someone to get any amount of money, and I have [1970] forgotten what the amount was, now.

Q. Well, you were to get some money before you brought a suit?

A. No, the agreement was that we were to allow a suit to be brought in our name, and then we would

(Testimony of Lois Parker.)

get a certain sum of money, and at the final ending of the suit, I think it was when probably a decision was given, we were to get the balance of the money.

Q. When a decision was given?

A. Yes, and there was a definite amount of money held out as Mr. Buell told me to be sure that we did not take a trip, that we would have to be present.

Q. Did you and Mr. Marsh and your husband go into the other room where the rest of them were?

A. I don't recall if they were there when we went in or not, but ultimately we were all seated, and Mr. Dwyer and Mr. Alstadt, Mr. Buell, Mr. Marsh, my husband and myself were there.

Q. Then what happened?

A. Well, the first thing we talked about was the fact that they had gone to our banker and suggested that we didn't pay.

Q. That you didn't pay Mr. Winans?

A. Yes.

Q. How did you happen to talk about that?

A. Because we were angry about it.

Q. What did they say about that? [1971]

A. Well, they finally said well, they were very sorry, but I don't think they were.

Q. That last can be stricken. They said they were sorry anyway. Then did you and your husband refuse to sign that contract or refuse to accept that contract as a final settlement?

A. Well, I don't know whether we refused that day or whether Mr. Marsh said we would go home

(Testimony of Lois Parker.)

and do something about it. I really don't recall, what we—but we definitely did not sign it that day.

Q. What reasons did you give, if any, for being dissatisfied with signing a contract with them?

A. Well, it just seemed to us that we did not have to sue to collect any money under the title policy, and that is the reason we gave.

Q. Your feeling of antagonism on account of their talking to your banker the way they did, did that have some bearing on it, too?

A. Well, it certainly did.

Q. Did you tell them so? A. Yes, I did.

Q. Later on there was another contract sent down to Mr. Marsh. Do you know whether you ever saw that?

A. I don't recall whether I ever saw any further one or not. [1972]

Q. Did you read either of these proposed contracts yourself or have them read to you by anybody?

A. I can't recall that I did. I don't know now whether I did or not.

Q. At this meeting that you refer to was there any discussion in that meeting as to whether the Winans knew about their defective title when they sold the property to you?

A. Well, it didn't come up as a discussion. It came up as a statement that they knew all about it, and it was crooked, and that they knew it when they sold us the property.

(Testimony of Lois Parker.)

Q. Who made that statement?

A. Mr. Buell.

Q. Did they do anything to convince you that that was crooked?

A. Yes, my husband objected and he said that he didn't think so, that he knew Miss Winans, and he didn't think so, and Mr. Alstadt said to him, "Jim, bring out the file," and so he brought out his file. It had a letter in it where Miss Winans had written to the other abstract company asking them for a settlement or some money on a title policy that she had.

Q. Was that a surprise?

A. I certainly knew of no such a thing before.

Q. At any time up to that time had you known that the Winans knew about this defective title when they sold the property to you and your husband, or your husband?

A. No, I did not know about it. [1973]

Q. That was the first information you had on the subject?

A. Other than what Mr. Abraham told me that there had been a defect in the title.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: I have no questions.

Mr. Krause: I have none.

Cross-Examination

By Mr. Buell:

Q. Do you mean, Mrs. Parker, that Mr. Parker did not tell you following the conference that he had with Mr. Dashney, Mr. Alstadt, and myself that

(Testimony of Lois Parker.)

Ethel Winans had collected a prior loss against another title company?

A. I don't recall any conversation with my husband, and I never heard tell of such a thing until I saw it in your office, and I don't believe that he ever saw such a paper.

Q. Didn't he tell you that he had agreed to sue at that first conference that he had with me and Mr. Alstadt?

A. Yes, he certainly did tell me he had agreed, and I disagreed immediately.

Q. You did not want to sue?

A. I certainly didn't, and I still do not.

Q. But he did not tell you anything at all about the basis of the suit being that the Winans family knew all about the defects in the title and had not disclosed it to you?

A. He certainly didn't. He told me it was a suit to put the [1974] property back in the Winans, for you to get the money from them, and we were to have the money from you. Now that is the kind of suit I understood it was to be.

Mr. Buell: I have nothing further.

The Court: That is all.

Mr. Jaureguy: That is all. [1975]

* * *

FRANCIS E. MARSH

a witness produced in behalf of the defendants Parker, having been first duly sworn, was examined and testified as follows: (Surrebuttal Testimony.)

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name and residence, please?

A. Francis E. Marsh. I reside at McMinnville, Oregon.

Q. And your occupation?

A. Attorney at law or lawyer.

The Court: One of the better lawyers.

Q. (By Mr. Jaureguy): Are you a member of the firm of Marsh, Marsh and Dashney?

A. That is right.

Q. That is a firm in McMinnville?

A. Yes.

Q. You have practiced there for some little time?

A. Since 1935.

Q. Prior to that you were in Portland?

A. That is right.

Q. With the firm of Wilbur, Beckett and Oppenheimer? A. For five years.

Q. There is no question about Mr. Marsh's ability, and he has been here for many, many years practicing in this court.

Q. (By Mr. Jaureguy): Do you know the defendants Chet Parker and Lois Parker in this [1981] case? A. Yes, I do.

(Testimony of Francis E. Marsh.)

Q. Have you ever acted as attorney for them?

A. Oh, quite a number of times.

Q. Did they consult you some time prior to September 20, 1951, with respect to a possible controversy or claim against the Title and Trust Company on a title insurance policy involving some property at Lost Lake? A. Yes, they did.

Q. Did your firm, members of your firm represent them thereafter throughout a series of conferences with representatives and attorneys of the Title and Trust Company? A. Yes, we did.

Q. Could you tell us about when the first of those conferences took place?

A. Well, I reviewed my correspondence, and as far as I can tell, the first conference was on the 20th day of September, 1951.

Q. You have some memorandum there?

A. Yes, well, it is just——

Q. I take it there will be no objection.

A. I think I have it in mind.

Q. You say you first thought it was on the 20th of September? A. Yes.

Q. Where was that held?

A. In my office. [1982]

Q. Who were present?

A. Mr. Alstadt and Mr. Dwyer and Mr. Buell representing the Title and Trust Company, and myself, and I think Mr. Dashney of our office was there for a short time.

Q. Was Chet Parker there?

A. Yes, Chet Parker was there.

(Testimony of Francis E. Marsh.)

Q. Are you certain Mr. Buell was there on that first occasion?

A. No, I am not very certain because there was—a few days later on the 25th I know that Mr. Buell was there on the 25th. It could have been Mr. Alstadt and Mr. Dwyer. Let me check, and I can tell you.

(Refers to document.)

On the first occasion it was Mr. Alstadt and Mr. Dwyer and Mr. Parker and myself and possibly Mr. Dashney.

Q. Will you tell us generally what took place at that meeting?

A. Well, it was a general conversation relative to the condition of the title to some timberland in Lost Lake in Hood River County.

Mr. Alstadt explained to Mr. Parker and myself there is a defect in the title to one of the pieces of the property, and I do not recall whether it was Lot 1 now or Lot 2, but it was one of the pieces that title was good and on the other piece the title was defective, and he explained to us why the title was defective in that it was formerly school land; that it had not been surveyed, and some of the records in the state capitol [1983] in Salem had been destroyed in a fire, and the government apparently was claiming that the title to that property was still vested in the government and that they could not convey good title to Mr. and Mrs. Parker, and that was generally the conversation. He went into, with quite

(Testimony of Francis E. Marsh.)

a little detail at that time as to why the title was defective, and there was some more conversation about what to do about it, trying to rescind the deal with Mr. and Mrs. Winans or the Winans—I have forgotten just which Winans were interested in it—and we talked for an hour or so in the office there in the afternoon, as I recall it.

Q. That about covers?

A. Well, I presume there was a lot more to it, but I cannot remember.

Q. Would you say that there was any reference at that meeting to a prior policy issued by Pacific Abstract and Title on which there had been a payment?

A. Yes, as I recollect it, it was either at that meeting or the next meeting, but I feel quite positive that it was at the first meeting, I think Mr. Alstadt had some of the records from the old Pacific Abstract Company that formerly had an office at Hood River and showed me and the rest of us the defects there that had arisen in the years before and explained that the records in the Hood River office had been transferred to the Portland office and that the party now in charge of the Hood River [1984] office for the Title and Trust Company was not in a position to find this change of the title that had been prepared by the Pacific Abstract Company. I think he went into that just as a matter of conversation.

Q. Then do you recall when the next meeting was?

(Testimony of Francis E. Marsh.)

A. The 25th day of September, as near as I recall.

Q. Who were present then?

A. Well, Mr. Buell and Mr. Alstadt, and during the course of the meeting my brother was there, Eugene Marsh, and Mr. Dashney and myself, and I—it is possible that Mr. Parker was there, too, but I'm not positive about it.

Q. I think probably the others have agreed that Mr. Parker was not there at that time.

A. I do not recall him being there, but it might have been that he was.

Q. What took place there, anything different than the first one, or what was advanced then?

A. Well, at the first meeting, as I recall it, we were hopeful or all of us were hopeful that there might be some way to perfect the title, let us say, to, is it Lot 1 or is it Lot 2 that is involved—Lot 2, I believe, by applying to some proper authority in the federal government trying to perfect the title, and when they came back on the 25th Mr. Buell and Mr. Alstadt apparently had determined that whatever steps could be taken in that direction would take so long that it would not bring [1985] about any effective result, and so they abandoned, apparently they said they had abandoned that procedure, and they wanted to know if they could not work out some process with the help of Mr. and Mrs. Parker to bring some kind of a lawsuit against Winans to rescind the contract, to try to make an agreement

(Testimony of Francis E. Marsh.)

with Parkers there to carry this matter out, and that was the gist of that conversation, as I recall it.

Q. Then the next meeting?

A. Well, the next day, which was the 26th day of September, I left on a deer hunting trip, and I was not in the office until the 8th day of October, but during the meeting of the 25th it was arranged between Mr. Buell and Mr. Alstadt that in the event that something could be worked out that Mr. Dashney would take care of it. I think that we were to get in touch with Mr. Parker and see what could be done, and some time between the 25th of September and the 8th of October when I returned some negotiations at least had been had, and Mr. Dashney took care of that part of it, and I know—I have no personal knowledge just what took place except what I have been told.

Q. Then did you attend any meeting after that?

A. Yes, I called Mr. Buell on the 11th of October, and we arranged a meeting in Portland for the afternoon of October 12 in Mr. Buell's office, and Mr. and Mrs. Parker and I met at [1986] Mr. Buell's office some time around 1:00 o'clock as I recall it, or 1:30 on the afternoon of October 12. As I further recall, we had an agreement, a written agreement there, that Mr. and Mrs. Parker and I went over, and then finally we had a meeting with Mr. Buell and I think—I can't recall—I think Mr. Alstadt was there, and I have a feeling that Mr. Dwyer was there, but I'm not positive about that. That is my recollection.

(Testimony of Francis E. Marsh.)

Q. When you and Mr. and Mrs. Parker went over the agreement did you read it out to them, or did you just explain the principal provisions?

A. Well, I don't recall. I can't remember though we went over it pretty carefully, but I am not sure whether we read it in detail or not.

Q. Then did you say that you had some changes you suggested?

A. Yes, if I could see the one that we were working with I think I could tell you what changes were suggested.

The Court: It is Number 9, I think.

Mr. Jauregui: There are two of them, your Honor.

The Court: Seven, eight and nine. There were three. Eight is the one that has the front page missing.

The Witness: Well, Exhibit Number 9, which is an agreement, is the one that we finally arrived at before we left, and either Exhibit Number 7 or 8 was the agreement that had been proposed prior to that time. I think the amount of the payment [1987] was changed from 90,000 up to 110. I think there was some change about the time of that payment. As I recall it, there was a definite time that the 90,000 was to be paid, and then the 110,000 was to be paid within so many days after notice from the Parkers, and I cannot recall all of the changes, but I know that Mr. and Mrs. Parker were not entirely satisfied on the 12th day of October, when I met with them with the agreement that had been pre-

(Testimony of Francis E. Marsh.)

viously prepared, which is apparently either Exhibit 7 or Exhibit 8. And, as a result of that, after considerable conference with Mr. Buell, Mr. Alstadt, and Mr. Dwyer, as I recall, we arrived at this agreement which is now Exhibit 9.

Q. But it was not written that day, was it?

A. No, it was not written that day.

Q. At any time during that meeting did the Parkers protest against entering into any such agreement at all?

A. At first they were provoked because of some investigation that someone from the Title and Trust had made at McMinnville, and they thought it was a reflection upon them, and they were provoked about that. I remember that. They were hesitant about getting mixed up in a lawsuit of any kind though were not—they were willing, apparently, to testify as witnesses, but they felt that they had a title policy and why should they be bothered about lawsuits, and that was one of the other things that was discussed, as I recall it. [1988]

Q. At any of these meetings was there any discussion of negotiations that had gone on in the purchase of the property or the number of times that the Parkers had seen the Winans?

A. Well, the only thing I can remember about that, I feel positive that Mrs. Parker told me and told me in the presence of others that she had never met the Winans, and I have got the impression from that that Mr. Parker had met the Winans

(Testimony of Francis E. Marsh.)

maybe once or twice or three times, I don't know, but that is the impression that was left at those meetings.

Q. That is your best recollection?

A. That is my best recollection.

Q. At any of these meetings were Mr. and Mrs. Parker or either of them shown the correspondence that had taken place between the Winans and the Pacific Abstract and Title Company in 1944?

A. I believe that was at the first meeting when Mr. Parker was not there.

Q. You say when Mr. Parker was not there?

A. Was not there. I think I was shown some of that, but I don't think I read any of it. I think it was just related to me. I don't recall now for sure.

Q. What about the fourth meeting when they were both present?

A. You mean——

Q. In Portland?

A. In Portland. I do not remember; I cannot tell you. [1989]

Q. Do you remember photostatic copies being shown to Mr. and Mrs. Parker and both of them looking at them, or do you have any recollection?

A. I do not have any recollection now.

Q. Was there any discussion in any of the conferences that you had with the attorneys either when Mr. Parker was or was not present about the possible right of the title company against Stegmann?

A. Well, not when I was present that I recall. It might have happened, but based upon the his-

(Testimony of Francis E. Marsh.)

torical background of the title, it was the feeling that the title was defective and that these Winans, whoever they were, may not have known about it and that they had a ground to rescind it, and get their money back, and that was the whole talk all the time.

Q. With respect to the Winans?

A. With respect to Winans.

Q. But do you remember any talk about the rights with respect to Stegmann?

A. Well, the only thing I can recall, I think somebody mentioned it would be necessary to make him party to the case either as a defendant or a plaintiff or something. I cannot recall much talk about Stegmann. There was some talk about—Mr. Alstadt and Mr. Buell asked us what we knew about Stegmann and asked us things of that kind, and they thought for a while he was a relative of Mr. Parker, and we talked a little bit about that, [1990] but I don't remember anything about his legal liability or responsibility being discussed. It might have been discussed. I am just saying I have no recollection of it, didn't take any notes of this meeting.

Q. How long have you known Stegmann?

A. Oh, I have known him six or seven years or more.

Q. They asked you about him, and you explained to them what you knew about him?

A. I told them that I didn't know too much about him except that I knew that he had been engaged in timber transactions with Parkers or I don't know

(Testimony of Francis E. Marsh.)

to what extent, but I did know that, and I think I told them that, and they thought he was related. I told them I didn't think he was. I wasn't sure.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: I have no questions.

The Court: Mr. Krause?

Mr. Krause: I have none.

The Court: Mr. Buell:

Cross-Examination

By Mr. Buell:

Q. Mr. Marsh, during these discussions that you have mentioned, it was at the least assumed by everybody, was it not, that Mr. and Mrs. Parker had no—received no knowledge or notice from the Winans family about the defect of the title prior to the time that they got their deed? [1991]

A. Oh, yes.

Q. Did you testify that that Exhibit 9 that you have just referred to substantially reduced to writing the terms of an agreement that we had worked out on October 12th?

A. Oh, I think it definitely did.

Q. Then the following Saturday afternoon you contacted me at my home to tell me that the Parkers did not want to go ahead with it?

A. That is correct.

Q. Referring back to the meeting on September 25th as to whether or not Mr. Parker was present, perhaps this might refresh your memory a little. Do you recall that there was some discussion about

(Testimony of Francis E. Marsh.)

his being out of town, and one of the reasons for calling Mr. Dashney in was to attempt to get hold of Mr. Parker as soon as possible and explain to him our proposal about trying to work out some kind of a rescission?

A. That is right, and he was not there that day, I know.

Q. Then still referring to the meeting of the 25th, do you recall that on that day you made arrangements to have a copy of the option and the notice of election to purchase under the option photostated and sent copies up to us?

A. Yes, well, I recall that I had Mr. Dashney take it over right then to have it photostated to send to you. I do not know whether that was on the 20th or the 25th, but at either one of [1992] those days.

Mr. Buell: I wonder if we could get Exhibit 26.

The Court: Mr. Lindsay, what is the number of the exhibit, of the option that was not signed?

Mr. Buell: Is that 74-A?

(Thereupon there was discussion off the record.)

Mr. Lindsay: It is Number 327.

Mr. Buell: Will you hand this to the witness?

(Document presented to witness.)

Q. (By Mr. Buell): Would you examine Exhibits 26 and 327 there, Mr. Marsh, and then advise

(Testimony of Francis E. Marsh.)

us whether or not you can recall any discussion about who it was that exercised the option?

A. I cannot remember any discussion. I know there was some discussion but I cannot recall it. We talked about so many things, never took any notes down. I just cannot recall it.

Mr. Buell: I have no further questions. Thank you, Mr. Marsh.

Examination by the Court

Q. In each draft of the proposed contract there are some recitals. Will you take a look at Exhibit Number 9? Now, on the 2nd page, about halfway down the page, there is a recital with reference to notice or lack of notice of any defect. Do you see that? A. Yes. [1993]

Q. Did you discuss that with the Parkers. Did they object to it? Do you know whether that was read to them first?

A. Well, you see, we didn't prepare this agreement the day that we were in Portland on the 12th. We did not have time. We did not prepare this agreement on the 12th of October, and so the next morning, which was Saturday, Mrs. Parker called me up, and she was still not satisfied to go ahead with this. All they wanted, they said, "We have got a title policy for \$125,000, and if the title of this tract is bad, why aren't we entitled to our money?" Then possibly a day or two later this came. Now, I don't even know whether the Parkers even read it.

(Testimony of Francis E. Marsh.)

Q. Show him Exhibit 7. Have you exhibit 7 there also? A. No, I have not.

(Document tendered to witness.)

Q. If you will look on the 2nd page of Exhibit 7 in the identical spot you will see that same recital.

A. This is 8.

Q. All right, look on page 1 of 8, the first page in the middle of the page. That is page number 2. Do you see that recital there? A. Yes, I do.

Q. Now, look at Exhibit Number 7 on page 2.

A. Yes. [1994]

Q. That same recital appears in all three documents; does it not?

A. Well, yes, if you want my answer, your Honor, I think this, that all through this negotiation there was nobody assumed that Parker ever had notice of any defect prior to the time he got his deed. It never was questioned particularly because the title was defective, and the company issued the policy, and we never got down to that point of questioning whether Parker had knowledge or not, and he probably—and I know that we read these parts, these parts were read to him on 7 and 8. I do not remember any objection to them.

Q. That was not the basis of Parker's refusal to sign the agreement? A. Not a bit.

Q. Do you recall any conversation that Mr. Buell may have had with the Parkers concerning notice or lack of notice in which the name of Mr. Kenneth Abraham came up?

(Testimony of Francis E. Marsh.)

A. The only thing I know about that, Mrs. Parker and we have discussed with Mr. Buell—now, this will probably be inaccurate but there was some statement by Mrs. Parker to me after the deed had been recorded that Mr. Abraham made some statement that there was a doubt in her mind about the title. Now what the statement was I do not recall.

The Court: Are there any further [1995] questions?

Mr. Buell: I did have one more, your Honor.

The Court: Mr. Buell?

Q. (By Mr. Buell): When Mrs. Parker called you on that Saturday, October 13th, wasn't she again at that time pursuing her thought that she couldn't see any reason they could not collect the full \$125,000 on the basis of failure of the title to the forty acres?

A. Yes.

Q. Do you recall during these conferences that you have mentioned as to whether or not both Mr. and Mrs. Parker on occasions they were present affirmatively advised all persons present that they paid the full \$125,000 for the property with the only exception of a refund check of about \$4,700, the exact amount of which they were not certain?

A. Yes.

Mr. Buell: No further questions.

Mr. Jaureguy: No further questions.

The Court: That is all.

(Witness excused.) [1996]

WILLIAM H. DASHNEY

a witness produced in behalf of defendants Parker, having been first duly sworn, was examined and testified as follows: (Surrebuttal Testimony.)

Direct Examination

By Mr. Jaureguy:

Q. Could you give us your name and address?

A. William H. Dashney, McMinnville, Oregon.

Q. You are a partner of Eugene Marsh?

A. Yes, sir.

Q. Francis Marsh, and Francis Marsh who was the last witness?

A. Yes, sir.

Q. How long have you been practicing law?

A. Since 1935.

Q. As a member of that firm, did you participate in any of the conferences that took place between and including September 20th to October 12th between members of your firm, Mr. or Mrs. Parker, or both of them, and representatives or attorneys of the Title and Trust Company?

A. As I recall, I participated for a short while in the September 25th conference, the second one. I don't believe I was, as I recall, I don't believe I was in on the first one.

Q. The second one, was that the one where—or what is your recollection on the first conference that you attended whether Mr. Parker was present?

A. I don't believe he was. [1997]

Q. Or Mrs. Parker? A. No.

(Testimony of William H. Dashney.)

Q. What was the general nature of the discussion at that time?

Q. All that I distinctly recall at that time is the fact that I took the option and the exercise of the option down and had them photostated. I was just in for a short while.

As I recall, Mr. Eugene Marsh and Mr. Francis Marsh were having most of the discussion with the parties from the Title and Trust Company.

Q. Do you have any—well, I will put it this way. Do you have any recollection of anything that took place at that conference other than what Mr. Francis Marsh has testified to? A. No, sir.

Q. Or do you have any corrections to make to anything he said? A. No, I do not, sir.

Q. Then you were present at another conference, were you?

A. Yes, I was at the one when Mr. Marsh was away hunting, and Mr. Alstadt and Mr. Buell and Mr. Parker were there, and I believe that was the 27th of September.

Q. Will you tell us what happened at that conference?

A. Well, at that time they had asked me to get Chet Parker in so we might discuss some sort of an agreement that might be entered into between him and Mrs. Parker and the Title and Trust [1998] Company.

I do not recall, but I believe that Mr. Buell had a rough draft of an agreement at that time. I am not positive about that. We discussed it quite at

(Testimony of William H. Dashney.)

length about the question of the two pieces of land, and I recall that—I believe Mr. Parker had had some valuations of his own, \$90,000 on one piece and \$35,000 on the other, and he was justifying those valuations to Mr. Buell and Mr. Alstadt, as I recall, at that time, saying that the timber, there was more timber or something on the one on which the title was not good. Then he had apparently satisfied them as to the value of the timber, that it was there on the tracts, and then we started talking about what should go in the agreement and what should be paid and when it would be paid. I recall that they agreed that upon the execution of the contract, as I remember it, they were going to pay them \$10,000 and the balance at the time any contemplated litigation was terminated.

Mr. Parker at that time said, “Well, sometimes these things drag along in court a long while, and I would like to have a definite time as to when I was going to get my money.” They said that he would get it by January, by the end of January of 1952, as I remember, and that Title and Trust would pay it or they would put it in escrow down in the bank, and I remember I assured Mr. Parker that, in my opinion, Title and Trust was worth \$110,000 or whatever the balance was, and if they signed the agreement, why, they would pay it. Mostly that day we talked [1999] about that agreement.

Q. Did you attend any other conferences with them? A. No, sir.

Q. At either of those conferences was there any

(Testimony of William H. Dashney.)

discussion with respect to the negotiations that the Parkers or either of them had had with the Winans in connection with the purchase or the number of times that either or both of them had seen the Winans?

A. I don't recall any discussion of that nature. There might have been, but I just don't recall it.

Q. You were not, of course, present at any of the conferences where there was any—other than what you have testified to, any objection on the part of the Parkers to signing an agreement where they had to sue, or you were not present where they were concerned about investigations being made, anything of that kind?

A. No, not at the time. At the time of the meeting on the 27th I know we were explaining, Mr. Buell and I were both explaining to them the subrogation rights of the Title and Trust Company under the policy and that a suit would have to be brought in the name of Mr. Parker, and they asked him to execute a deed so they could tender it back, and while, at that time Mr. Parker said that he preferred to have them bring the suit in the name of the Title and Trust Company.

Q. Did he give a reason for that? [2000]

A. Oh, he said he just didn't want to be tied up in a lawsuit or litigation, that he was a busy man and had several lumber deals pending at the time.

Q. At either of these conferences do you recall whether there was any discussion as to the legal

(Testimony of William H. Dashney.)

situation as between the Parkers or the Title Company and Stegmann?

A. No, other than it was mentioned at that meeting that it would no doubt be necessary to make Mr. Stegmann a party defendant in a suit because the Title and Trust Company, if there was a chance to have a rescission and get their money back, they wanted it back.

Mr. Jaureguy: You may take the witness.

The Court: Mr. Ryan?

Mr. Ryan: I have no questions.

The Court: Mr. Krause?

Mr. Krause: I have none.

The Court: Mr. Buell?

Cross-Examination

By Mr. Buell:

Q. Mr. Dashney, do you recall at the conference on the 27th Mr. Parker was there and that after we finally reached a tentative agreement or verbal agreement to go ahead and settle and sue—or rescind the transaction, that we explained to Mr. Parker in general terms what the basis for a suit for rescission against the Winans family would be? [2001]

A. Yes, I believe we did, Mr. Buell.

Q. Do you recall a discussion and your making a little investigation of your files to determine whether or not there was any basis for bringing suit in federal court based upon diversity of citizenship?

A. Yes, I do recall that. Mr. Parker—I was

(Testimony of William H. Dashney.)

probating his mother's estate, and he being one of the heirs, he was shown as a resident of Vancouver, Washington, in that estate, as I recall.

Q. Then referring to the valuation of the property, do you recall Mr. Parker advising the three of us at that time that he was satisfied with the value of the smaller tract at \$35,000 just as he had it segregated in that assignment of option that he had?

A. Well, I do recall that he was satisfied that there was at least that much value there, yes, and it was my understanding or my recollection that he was intending to contend that there was more value there than that but that he was justifying this sale that he had on that piece of paper that he had.

Q. Do you also recall whether or not he stated whether he would be perfectly happy to retain the tract to which he had good title at the valuation that he placed on it and settle for the failure of the title on the larger tract for the \$90,000 that he had allocated to it? [2002]

A. I just do not recall whether he agreed on that or not, Mr. Buell.

Q. With regard to the values that you mentioned that he explained generally how he had arrived at his values and based upon the timber on the property, however, there were not any—he did not produce any checks or evidence of payment at that time, did he? A. No, sir.

Q. Do you recall any discussion that afternoon

(Testimony of William H. Dashney.)

at all as to the part that Mr. Stegmann had played in this transaction?

A. I just do not understand what you mean, Mr. Buell. How do you mean, what part he played?

Q. Well, there was an assignment of the option from Mr. Stegmann to Mr. Parker? A. Yes.

Q. Do you recall any further discussions that afternoon as to whether or not Stegmann had had anything else to do with the purchase of the option by Mr. Parker?

A. No, it was my understanding from that that Mr. Stegmann had found it, he had sold it to Parker, and Parker had paid him \$25,000 for the option, and that was it. I believe that Stegmann—there was something about Stegmann helping him run some lines, I believe, on the property. I am not sure about that, but I do recall that in that proposed agreement in addition [2003] to the price for the timber you were to—the Title and Trust Company were to agree to reimburse him for our attorneys fees and his costs of cruising or surveying the timber, and at that time I think he said that he spent some time up there running some lines or had had them run. I can't remember which.

Q. Do you recall any conversation between myself and Mr. Parker relative to whether or not Mr. Paul Winans had made any specific representations to Mr. Parker as to the condition of the title?

A. I do not recall such a conversation.

Mr. Buell: I have no further questions.

Mr. Jaureguy: Nothing further.

(Testimony of William H. Dashney.)

Mr. Ryan: No questions.

The Court: That is all, Mr. Dashney. You are excused, you and Mr. Marsh both.

(Witness excused.)

Mr. Jaureguy: Call Mr. Parker. [2004]

CHET L. PARKER

recalled, having been previously sworn, testified as follows: (Surrebuttal.)

Direct Examination

By Mr. Jaureguy:

Q. Do you remember the occasion, Mr. Parker, when you and Mr. Stegmann, and, I think, one or two others about August 27th, went up to Lost Lake, and Mr. Winans was not with you? A. Yes.

Q. Tell us what took place when you came to Winans? You have heard Mr. Winans testimony about he wanted to go, and you said it was not necessary or something like that. Do you remember what that conversation was?

A. Well, all I remember is that we stopped to get him to go along with us and that was the purpose of stopping, to get him to go along with us, and he had other stuff to do with his housing. He had something to do with housing or had to go to Hood River, or something, and I think if we could wait until after lunch or something, why then he would go along with us. The purpose for stopping was to get him to go along.

(Testimony of Chet L. Parker.)

Q. Do you have any recollection as to how you were dressed that day?

A. No, I was in my work clothes, and I had on staked-off overalls, and either I had my cork boots on then, or else I had my old pair of oxfords, and I had a T-shirt. I wore a T-shirt a lot, a white T-shirt and I either had on a dress hat [2005] or my old tin hat.

Q. One of those, the tin hat was the canvas hat you have spoken of before?

A. Yes, I have had it for many years. It is like an old board, and it was pretty, rather warm weather so I am positive I didn't have a coat on, but it would have been impossible for me to have had a green coat on there because I have never worn one, nor have I ever owned one.

Q. This was a green cruiser's coat?

A. That is what Mr. Winans said, but he is in error.

Q. Were you introduced to Mr. Winans at that time? A. No.

Q. Or were you referred to by Mr. Stegmann as a surveyor he had brought along?

A. Oh, no, not in my presence, that is.

Q. I think that Mr. Parker has already testified with respect to the conferences that he had attended, but I do want to ask him whether or not at any time at any of those conferences you made the statement that the only time you had met Winans was on the one survey trip?

A. No, I certainly did not make that statement.

(Testimony of Chet L. Parker.)

Q. Do you remember what might have been said?

A. Well, I might have said—I might have said at one time I saw him or something like that, but I certainly did not say the only time I saw [2006] him.

* * *

HERBERT A. ALSTADT

recalled, testified as follows:

The Court: I understand you are being called because there is some doubt as to whether or not there is any testimony here as to why the insurance policy was issued; is that right?

Mr. Buell: That is correct, your Honor.

The Court: All right, go ahead.

Q. (By Mr. Buell): Could you tell us, Mr. Alstadt, why the company went ahead and issued an insurance policy after the Forest Service had called its attention to the defect in the title?

A. Because as we had previously issued a purchaser's policy, we felt that we were not increasing our liability in any way, and we felt that the insured under the purchaser's policy was entitled to that protection.

Mr. Buell: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. That is, it is a general policy of your company, is it not, where a person is purchasing property and he gets a title report and then the pur-

(Testimony of Herbert A. Alstadt.)

chaser's policy and then it is discovered that it is a relatively short transaction where really he should have gotten an owner's policy instead of the purchaser's before, you issue him an owner's policy and have the purchaser's policy surrendered? [2008]

A. That is right. I might add this, that that frequently happens that people get the wrong form of policy to cover their transaction and that the owner's policy is a better policy than the purchaser's policy.

Q. Let me ask you, I don't know exactly where it is in your deposition, but you can probably recall whether you said it or not, but in your deposition when you gave your deposition you apparently had overlooked the fact that you had given a purchaser's policy and said that the reason that you gave the owner's policy is because you had given a title report?

A. That is right, I did overlook the fact that a purchaser's policy had been issued.

The Court: Did you charge any premium for the issuance of the owner's policy?

A. No, we did not because it was all the same transaction.

The Court: That is all. Mr. Ryan?

Q. (By Mr. Ryan): It is your testimony now that the reason you gave the owner's policy with knowledge of this defect is because of your obligations under the purchaser's policy?

A. That is correct, we were obligated under the

(Testimony of Herbert A. Alstadt.)

purchaser's policy. There was no actual change in title.

Q. Were you obligated to insure the face amount of the policy?

A. I do not think we would be, no, unless it was proved that there was a further consideration paid. [2009]

Mr. Jaureguy: I do want one other question just to be safe. Now, you are telling us what you did just by reason of that general policy of the plaintiff's. You had nothing to do with the transaction yourself, as I understand it?

A. I had nothing to do with the transaction, no.

The Court: Mr. Krause?

Mr. Krause: I have not anything.

Q. (By Mr. Buell): Mr. Alstadt, would it have made any difference in what the company had done relative to issuing the owner's policy if the company had known that the Parkers had knowledge of the defect at the time either the purchaser's policy was issued or prior to the time of the issuance of the owner's policy?

Mr. Jaureguy: I object to that as purely hearsay.

The Court: Objection sustained.

Mr. Buell: Nothing further.

The Court: This witness did not have anything to do with it. The question is improper. Mr. Jaureguy?

Mr. Jaureguy: I would like to ask permission to at this time read into the record the numbers of the pre-trial exhibits that I think I will wish to offer.

They are in possession of one of the other attorneys and they are not here, and I wish to examine them first. Numbers 71 and 72-A. If any, it would just be a portion of that. 72, if any, just a portion of that. [2010] 73——

Mr. Lindsay: It is in evidence.

The Court: 71, 72 and 73 are in evidence.

Mr. Jaureguy: Well, they are not all in evidence. I am reading now, I assume that the numbers have not been changed of any exhibits. Some have been added, and I am reading now from the original file.

(Discussion off the record.)

Mr. Jaureguy: 24 is in. It has got a "R."

Mr. Lindsay: "R" after 24?

Mr. Jaureguy: Yes.

Mr. Lindsay: Alstadt's deposition, that is the deposition of Herbert Alstadt, I thought.

Mr. Jaureguy: That is marked with an "R" here.

The Court: Mr. Bishop reminds me that all depositions have been admitted.

(Discussion off the record.)

Mr. Jaureguy: This does not show that 59 is in. If it is not, it should be in. I think counsel will agree with that.

The Court: What is 59?

Mr. Jaureguy: A certified copy of the proclamation placing public lands within the township, creating the Bull Run Timber Reserve.

Mr. Buell: That was offered along with the other. [2011]

The Court: It will be admitted. Will you present it?

(Discussion off the record.)

The Court: Is it given two numbers?

Mr. Buell: No, it is not, your Honor. I have them both being marked as received. If the Court will recall, most of those documents have been, I think, are admitted in the stipulation of the facts. Mr. Ryan had a question.

The Court: I recall the conversation. I am going to admit it now, but if you produce—if you cannot find it now we will find it a little later. I think we have solved one difficulty. Because of Mr. Ryan's objection, I took it under advisement. Mr. Ryan wanted to look at the documents during the noon hour.

Mr. Ryan: That is right, your Honor.

The Court: Do you still have any objections, Mr. Ryan?

Mr. Ryan: No, I have seen them now, your Honor.

The Court: All right, 59 and 60 are admitted.

(Documents previously marked Plaintiff's Exhibits 59 and 60 were received in evidence.)

Mr. Jaureguy: What about 318? Under the stipulation 318 is marked as handwritten notes by Paul Winans as a timber cruise on Lots 1 and 2 and I offer that in evidence.

The Court: Any objection?

Mr. Buell: We object to that your Honor, on

the ground that it is not properly identified, no ability to cross-examine the person who is supposed to have made the alleged [2012] cruise.

Mr. Jaureguy: I would like to call Mr. Winans in and ask him what it is.

Mr. Krause: Well, it is a copy of a county cruise. It is not his cruise. It is a copy of a record in the county assessor's office.

Mr. Jaureguy: When was that record dated?

Mr. Krause: The cruise was made in 1915 or so; was it not?

Paul Winans: Yes, around that time.

The Court: 1950?

Mr. Krause: 1915.

The Court: 1915.

Mr. Krause: And he made a copy of the cruise that they had there in the county assessor's office.

(Discussion off the record.)

Mr. Jaureguy: Where is the original?

Mr. Krause: In the county assessor's office, I suppose.

Mr. Lindsay: We couldn't find it.

Mr. Jaureguy: You could not find the original?

The Court: Objection overruled; it may be admitted.

(Document previously marked Third-Party Defendant's Exhibit 318 for identification was received in evidence.)

Mr. Jaureguy: I do not see anything else that I wanted here.

The Court: Are you all through? [2013]

* * *

I, Gordon R. Griffiths, an official court reporter to the United States District Court for the District of Oregon, hereby certify that at the time and place heretofore mentioned in the caption and index of the foregoing cause I reported in shorthand all proceedings had and testimony adduced in the trial of the said before-mentioned cause; that my shorthand notes were thereafter reduced to typewriting under my direction, and that the foregoing transcript, consisting of pages 1 through 2027, both inclusive, is a true and correct transcript of all proceedings had and testimony adduced, and of the whole thereof.

Witness my hand at Portland, Oregon, this 31st day of December, 1953.

/s/ GORDON R. GRIFFITHS,
Reporter.

[Endorsed]: Filed January 9, 1954. [2028]

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Friday, March 20, 1953

The Court: Mr. Krause.

Mr. Krause: Your Honor, this is the time fixed for the taking of testimony on the factual matter relating to the extent of services performed by us in connection with this lawsuit for the Defendants

Paul Winans, et al., and the record of expenses, of money expended in connection with the defense.

We have prepared a little memorandum here, copies of which have been given to counsel, and if it is agreeable to them and to the Court—it is to us—to stipulate that if Mr. Lindsay or I were called as witnesses that we would testify that this was a correct statement of services performed [2*] by us and the hours spent by Mr. Lindsay, myself and other members of our office whose names appear on the memorandum in connection with the case and that that memorandum of expenses incurred was expended by us through our office in paying for the items mentioned here all in connection with this case——

The Court: Are any of these items listed among the expenses items of taxable costs?

Mr. Krause: No, they are not, your Honor. Might I say what they are?

The expenses of investigation, of course, were the costs, actual costs of the members of our office, because all the investigations were made by members of our office. No one was hired to make them. The depositions were our copies of all the depositions taken. Those are not recoverable costs, as I understand. Then we paid the Reporter for portions of a transcript, portions of the testimony, totaling \$54.00, maps and photostats; we paid \$20.97, and our long distance calls in connection with this \$112.41, for a total of \$576.80.

Then our witness fees and recoverable costs we did not include here on the assumption that we

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

would be allowed costs in connection with the case. Our action against Parkers and Stegmann is a law action, and I assumed that costs would follow the judgment, and that action, of course, was against [3] them.

Then there was Title and Trust's action against us in which they failed, and we would be ordinarily entitled—I think that was in an equity action—we would ordinarily be entitled to costs there.

The Court: Do you want them sworn, any of them?

Mr. Jaureguy: No.

Mr. Ryan: No.

Mr. Krause: Whatever the wish is, if they wish to have either of us on the witness stand to examine us regarding any of these items, we will take the stand.

The Court: What do you figure your time is worth, Mr. Krause? What do you ordinarily charge for your time?

Mr. Krause: Well, the time in court in the Federal Court in such days as we spent here during this case, \$250 a day.

The Court: \$250 for yourself. What do you figure for Mr. Lindsay?

Mr. Krause: Well, we figured \$150 a day, I believe, and on the time of these younger men in the office \$10 per hour. That is what we would charge other clients, and we think it is moderate.

The Court: How much hourly charge, the 175 hours, that includes something more than trial time, does it?

Mr. Krause: Yes, it does. [4]

The Court: You did not break it down.

Mr. Krause: I think we can do that very easily. We were in court 13 days. 50 hours was over and above the time that was put in during the trial days.

The Court: How much of Mr. Lindsay's time over and above——

Mr. Krause: It would be about 125 off of 484.

The Court: About 360 hours. Well, I want to ask this question: Mr. Winans looked like a difficult witness, gregarious. How long would it have taken you if you had a different kind of client?

Mr. Krause: Your Honor, I do not believe that while he is wordy and there were more hours spent with him in ascertaining the facts, that would not amount to very much in this entire record of hours spent by us, and furthermore, it was Paul Winans that was slandered, not Joe Jones, and if Paul Winans is of that type I think that he would still be entitled to his time, whatever that would have amounted to. He himself, of course, spent at least three months of his own time on this, and that was all because of the fact that he was sued in this case.

Mr. Lindsay: I might say in that connection although he may seem like he uses quite a few words, at the same time he makes up for it, I think, almost with help to a lawyer by having a pretty good memory and by the diligent work he [5] performed which saved us from doing that kind of work.

The Court: Of course, I appreciate the fact that there were a lot of depositions taken, and on the

basis of around five hours a day and figured that way, Mr. Lindsay spent close to a hundred days on this one case.

Mr. Krause: There are no five-hour days in there, I don't believe, your Honor, because even the trial days were much longer than five hours, and on those days that we were engaged in trial, we as did counsel for all of the other parties, spent our evenings conferring and preparing for the next day so there were not any five- or six-hour days in any of that, I do not believe.

The Court: Mr. Jaureguy, what do you think?

Mr. Jaureguy: I do not want to make an argument, your Honor, and I will stipulate that if counsel take the stand they will testify as set forth in the memorandum. Heretofore I have argued the merits of the case itself, and we are not here for that so that I am still of the same opinion, of course, that they are not entitled to recover at all. I will say, and I hope I won't be asked to elaborate or argue, I will say I think that both the time they spent and the proposed charges per day are excessive. I think I spent all the time that was necessary for my part of it, and, of course, perhaps your Honor may say if I had spent another hundred hours I might have had a better result. I think my [6] full time is about 375 hours, and I do not think there was a dozen hours of it with anybody else in our office, and I do not care to make any further comments. [7]

[Title of District Court and Cause.]

MEMORANDUM OF EXPENSES INCURRED
BY THIRD-PARTY DEFENDANTS

Expenses of investigation.....	\$105.40
Depositions—our copies.....	284.02
Reporter for transcripts.....	54.00
Maps and photostats.....	20.97
Long distance calls.....	112.41
<hr/>	
Total	\$576.80

(Witness fees not included.)

[Title of District Court and Cause.]

MEMORANDUM OF LEGAL SERVICES PER-
FORMED BY KRAUSE & EVANS,
ATTORNEYS FOR THE THIRD-PARTY
DEFENDANTS

Study of complaint and initial conferences with various members of Winans family;

Four days investigation at Hood River, Oregon, interviewing witnesses, securing statements, locating documents, etc.;

Preparation and filing motion to dismiss original complaint for lack of jurisdiction and other grounds; argument of motion before court; attendance at various pre-trial hearings before court on jurisdiction and preparation of proposed pretrial order re same; preparation and submission to court of legal memoranda;

Study of answers and amended answers filed by the Parkers and by Stegmann; and preparation of a set of marked pleadings;

Preparation and filing of answer and cross-claims on behalf of the various Winans defendants;

Attendance at and taking depositions of Chet Parker (1 day), Lois Parker (1 day), Walter Stegmann (3 days), Paul Winans (1½ days), Herbert Alstadt (½ day);

Preparation of detailed summaries of said depositions and making indexes thereof;

Preparation and filing of amended answer and cross-claims on behalf of Winans defendants;

Study of pre-trial contentions, issues and requested admissions of Title and Trust Company and of Parker and Stegmann; preparation of pre-trial contentions, issues, admitted facts, and exhibits on behalf of Winans defendants; and attendance at pre-trial conferences before the court re same;

Study of plaintiff's amended complaint, the answer and counterclaims of Parkers and of Stegmann thereto, and of plaintiff's third-party complaint;

Preparation of third-party defendants' answers and claims against third-party plaintiff and against the Parkers and Stegmann; study of answers of Parkers and Stegmann thereto;

Conferences with other counsel and with clients re preparing stipulation of admitted facts;

Preparation of case for trial including trip to Hood River and to Lost Lake to inspect premises, conferences with all witnesses, analysis and summary of exhibits of all other parties, etc.;

Trial of case before court for approximately 13 trial days;

Oral argument of case before court (1 day) and preparation therefor; preparation of points and authorities for court and study of authorities submitted by other parties;

Legal research and preparation of legal memoranda on various matters, including (1) duty of disclosure of an applicant for title insurance; (2) rights of a title insurance company to be subrogated to its insured's rights; (3) United States as an indispensable party to the original action and other related jurisdictional matters; (4) negligence of a title insurance company as barring its right to subrogation; (5) failure of Parkers to rely upon representations as barring fraud action; (6) doctrine of abatement to purchase price; (7) doctrine of merger of contract rights into a deed; (8) bargain and sale quitclaim deed as affording no basis for recovery of purchase price; (9) mutual mistake of title to real property as not ground for relief; (10) commencing fraud action as an election and barring any remedy in nature of rescission;

Hours spent by various members of the office include:

Gunther F. Krause.....175 hours

(Including approximately 13 days
trial time, 1 day oral argument.)

Dennis Lindsay484 hours

(Including approximately 13 days
trial time, 1 day oral argument, 7
days depositions.)

Jack Kennedy126 hours

Gerald Robinson 68 hours

Total853 hours

[Endorsed]: Filed January 5, 1954.

[MEMO]

NE-NW 40.00

NW-NE 25.88

Sec. 16-1.S.8E.

Ethy-Winans

Hood River County

Chet L. Parker

106 E. 33 St.

Vancouver, Wash.

Phone 4-1951

W. B. Combs

vs.

1. W. R. Winans &
2. Mary Winans, his wife
3. Paul Winans, sgl.
4. Ethel Winans, sgl.

#3203 filed 8-5-46.

Suit to foreclose Mtg. 24/50.

Personal service of summons had on all defts.
8-6-46.

Sheriff's return filed 8-7-46.

Nothing more in file.

Description

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian.

Tax Roll	Owner	Amt. of Tax	Assessed Valuation
1925	W. R. Winans	\$26.38	\$650.00
26	W. R. Winans c/o Paul Winans	26.86	650.00
27	W. R. Winans, et al.	24.35	650.00
28	W. R. Winans	27.73	650.00
29	W. R. Winans	16.16	450.00
30	W. R. Winans	10.10	330.00
31	W. R. Winans	11.10	330.00
32	W. R. Winans	11.07	300.00
33	W. R. Winans	9.07	300.00
34-35	W. R. Winans	11.40	300.00
36	W. R. Winans	12.42	300.00
37	W. R. Winans c/o Ethel Winans	12.38	300.00
38	W. R. Winans	12.39	300.00
39	W. R. Winans c/o A. B. Combs	12.74	300.00
40	W. R. Winans c/o A. B. Combs	12.34	300.00
41	W. R. Winans c/o A. B. Combs	12.61	300.00
42	W. R. Winans c/o A. B. Combs	10.74	300.00

[The above Exhibit 3 also includes a copy of a title report dated August 15, 1951, this being Exhibit D to Plaintiff's Amended Complaint, and also a copy of a purchaser's title insurance policy which is Exhibit E to the Amended Complaint.]

AFFIDAVIT

State of Oregon,
County of Hood River—ss.

I, Edward Poirier, being first duly sworn, upon my oath depose and say:

That I am the duly appointed, qualified and acting assessor of Hood River County, Oregon; that I have examined my records and my records show that the following described real property, to wit:

Lot One (1) and the Northeast Quarter of the Northwest Quarter of Section 16, Township One (1) South, of Range 8 East, of the Willamette Meridian,

is located in Hood River County, Oregon, and that none of said tract is in Multnomah County, Oregon, though it has sometimes been stated to be located in Multnomah County, Oregon, in error.

Further affiant sayeth not.

/s/ EDWARD POIRIER.

Subscribed and sworn to before me this 30th day of Dec., 1943.

/s/ NEVA M. SINCLAIR,

Notary Public for Oregon.

My Commission Expires:

Original filed.

1892

Chet L. Parker, et ux., vs.

File No. 61763

Office of County Clerk, Hood River County

For Recording or Filing: Affidavit.

Hood River, Oregon,

Dec. 31, 1943.

Received From Hood River Abstract and Inv. Co.

One and No/100 Dollars (\$1.00)

Edward Poirier to The Public

/s/ [Indistinguishable.]

County Clerk.

When Recorded, Mail Instrument to.....

8000.00

No. 136

Ethel Winans

Eight Thousand

30th day of December, 1943, at 5 p.m.

Countersigned at Hood River, Oregon, this 30th
day of December, 1943.

HOOD RIVER ABSTRACT &
INVESTMENT CO.

By.....

President.

No. 136

HR-37882

The fee simple estate.

Lot 1 and the Northeast Quarter of the North-
west Quarter of Section 16, Township 1 South, of
Range 8 East, of the Willamette Meridian, in the
County of Hood River, State of Oregon.

No. 136

HR-37882

5. Mortgage, given by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated January 12, 1923, recorded January 17, 1923, in Volume 15 of Mortgage records, page 507, to secure the sum of \$1000.00 due one year after date, with interest at rate of 8% per annum, payable quarterly with privilege of paying note at any interest payment date.

6. Mortgage, given by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, filed November 24, 1936, in Volume 24 of Mortgage records, page 50, to secure the sum of \$541.80, payable on or before 3 years after date, with interest at rate of 8% per annum, payable semi-annually.

7. Judgment, W. R. & Audubon Winans, Judgment Debtors, to Hood River County, Judgment Creditors, docketed June 17, 1943, for Tax Warrant (110) in sum of \$92.48.

8. Judgment, E. I. Winans and A. W. Winans, Judgment Debtors, to Hood River County, Judgment Creditor, docketed June 17, 1943, for Tax Warrant (108) in sum of \$339.12.

9. Personal property taxes assessed against Ethel Winans in sum of \$3.75, for year 1944.

[Pencilled in margin at paragraph 7]: Sat. 6-7-44.

[Pencilled in margin at paragraph 8]: Sat. 6-7-44.

[Pencilled in margin at paragraph 9]: Passed.

No. 14201

United States
Court of Appeals
For the Ninth Circuit.

CHET L. PARKER and LOIS M. PARKER,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees.

Transcript of Record

In Five Volumes

Volume V

(Pages 1897 to 2297)

Appeals from the United States District Court for the
District of Oregon

FILED

MAY - 7 1954

No. 14201

United States
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CHET L. PARKER and LOIS M. PARKER,

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Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees.

Transcript of Record

In Five Volumes
Volume V
(Pages 1897 to 2297)

Appeals from the United States District Court for the
District of Oregon

Dec. 21, 1943.

Paul Winans,
R.F.D. No. 2,
Hood River, Ore.

Dear Sir:

We are prepared to issue title insurance covering:

Lot 1 and the Northeast Quarter of the Northwest Quarter of Section 16, Township 1 South, of Range 8 East, of the Willamette Meridian, in the County of Hood River, State of Oregon.

showing title on December 20, 1943, at 5 P.M. vested in W. R. Winans, subject to the usual printed exceptions and

1. Proof should be secured by an Affidavit of the County Assessor that Section 16, Township 1 South, of Range 8 East, of the Willamette Meridian is located in Hood River County. Early deeds to above lands stated that they were situated in Multnomah County.

2. Mortgage, given by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated Jan. 12, 1923, recorded Jan. 17, 1923, in Vol. 15 of Mortgage records, page 507, to secure the sum of \$1000.00 due 1 year after date, with interest at rate of 8% per annum, payable quarterly with privilege of paying note at any interest payment date.

3. Mortgage, given by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, filed Nov. 24th, 1936, in Vol. 24 of Mortgage

records, page 50, to secure the sum of \$541.80, payable on or before 3 years after date, with interest at rate of 8% per annum, payable semi-annually.

4. Judgment, Hood River County, Judgment Creditor, W. R. & Audubon Winans, Judgment Debtors, docketed June 17, 1943, for Tax Warrant (110) in sum of \$92.48. This is for Personal property taxes and Sheriff's assessment shows that W. R. Winans owes $\frac{5}{8}$ ths and Audubon owes $\frac{3}{8}$ of above amount.

Yours very truly,

HOOD RIVER ABSTRACT &
INVESTMENT COMPANY,

By.....
President.

This is a preliminary report only. No responsibility is assumed hereunder until full policy premium has been paid.

EXHIBIT No. 7

Agreement

This Agreement, Made and executed in duplicate this day of October, 1951, by and between Chet L. Parker and Lois M. Parker, husband and wife, of Vancouver, Washington, hereinafter called "Parkers," and Title and Trust Company, a Corporation, hereinafter called "Company";

Witnesseth:

Whereas, Parkers are the owners and holders of a policy of Owner's Title Insurance, No. HR 12-987, in the principal amount of \$125,000.00, issued by Company, insuring Chet L. Parker as the owner of a fee simple estate, subject to certain exceptions set forth in said policy, in the following described real property located in Section 16, Township 1 South, Range 8 East, Willamette Meridian, in the County of Hood River, State of Oregon: Lot 1, saving and excepting therefrom approximately ten acres more or less, more fully described in said policy, and the Northeast quarter of the Northwest quarter, which will hereinafter be referred to as "Lot 2"; and

Whereas, there is a defect in the title to said Lot 2 and Parkers have presented a claim against Company under said policy; and

Whereas, Parkers in support of said claim hereby represent and warrant that they paid Walter Stegmann the sum of \$25,000.00 for an assignment of an option held by said Walter Stegmann to purchase

the above-described property, a copy of which option and assignment are hereto annexed and

[Exhibit 7 is a preliminary draft of a proposed settlement between plaintiff and defendant Parker. Not executed and not discussed with Parkers. The above first page was the first page of Exhibit 8.]

EXHIBIT No. 8

incorporated herein, marked Exhibits A and B, respectively; and that they paid the vendor Winans the net sum of \$95,300.00 for a conveyance of the above-described property; and that the total consideration paid by Parkers for said property was the sum of \$120,300.00, and that no part of said sum or other thing of value in lieu thereof has been returned to Parkers, or either of them, or to their account; and

Whereas, Parkers claim that the value of Lot 1, based upon the amount of timber thereon, is the sum of \$30,300.00 and that the value of Lot 2, based upon the amount of timber thereon, is the sum of \$90,000.00; and

Whereas, the Parkers have represented to Company and hereby warrant that they had no knowledge of any defect in the title to said Lot 2 prior to their payment of the purchase price therefor and acceptance and recording of the deed to said property; and

Whereas, it is to the mutual advantage of Parkers

and Company to avoid or minimize the loss resulting to them, or either of them, on account of the defect in said title to Lot 2;

Now, Therefore, in consideration of the foregoing and of the following mutual promises, the parties hereto agree as follows:

1. Parkers hereby agree and elect to rescind the purchase of said option from said Stegmann and the purchase of the above-described property from said Ethel Winans, and authorize and instruct Griffith, Phillips & Coughlin, or such other attorneys as Company may designate to prosecute diligently such action or suit as may be necessary or advisable, in their opinion, to effect such rescission and hereby deliver to Company a quitclaim deed conveying Parkers' right, title and interest in the above-described property to the said Ethel Winans, together with said option and said assignment of option for surrender to the said Ethel Winans and Walter Stegmann, respectively, as necessary to accomplish said rescission.

2. That the valuation of Lot 1 and Lot 2 set forth above shall be conclusive and binding on the parties hereto for the purpose of establishing any loss of Parkers under said policy.

3. Company agrees to pay the sum of \$90,000.00 to Parkers on January 15, 1952, upon written request therefor and tender to Company of a properly executed quitclaim deed conveying Parkers' right.

title and interest in Lot 2 to Company and a properly executed assignment of all Parkers' claims and causes of suit or action against Ethel Winans and all other interested parties, if any, and Walter Stegmann arising out of the subject transaction, or option, or purchase, or defect in title to Lot 2, and of Parkers' interest in any final decree or judgment entered in any suit or action brought pursuant to the terms hereof to the extent of such payment and subject to the terms of Paragraphs 4 and 5 below.

4. In the event that the purchase of said Lots 1 and 2 is rescinded, either by agreement or by final decree or judgment in a suit or action brought pursuant to the terms hereof, and the said Ethel Winans, and/or other interested parties, if any, repay or become obligated to repay to Parkers or Company the amount of the purchase price received by them for said property, Company agrees to pay Parkers the sum of \$120,300.00, less the sum of \$90,000.00, if theretofore paid to Parkers under Paragraph 3 above, and less any sums theretofore paid Parkers by the said Ethel Winans, and/or other interested parties, if any, and/or Walter Stegmann on account of the said defect in title to Lot 2, upon written request and receipt of a properly executed assignment to Company of all Parkers' claims and causes of suit or action against the said Walter Stegmann arising out of the subject transaction, or option, or purchase, or defect in title to Lot 2, together with authority to continue or commence, as the case may be, a suit or action against the said

Walter Stegmann in Parkers' name to recover the amount which Stegmann received in payment for the assignment of said option and a properly executed assignment of said final decree or judgment against Ethel Winans, and/or other interested parties, if any, or a properly executed assignment of the evidence of obligation of the said Ethel Winans, and/or other interested parties, if any, to repay the amount of the purchase price of said property, and a properly executed quitclaim deed conveying all Parkers' right, title and interest in said Lots 1 and 2 to Company.

5. In the event of a final decree denying a rescission of the purchase of the above-described property, Company agrees to return to Parkers the deed from Parkers to the said Ethel Winans, provided for in Paragraph 1 above, upon receipt of a properly executed assignment of all Parkers' claims and causes of action against the said Ethel Winans, and/or other interested parties, if any, and the said Walter Stegmann and all other persons, parties or corporations, arising out of the subject transaction, or option, or purchase, or defect in title to Lot 2.

6. Company agrees to pay all costs and attorneys' fees arising out of any suit or action brought by it, pursuant to the terms hereof, in the name of Parkers, and to indemnify and hold harmless the Parkers from all loss or damage arising out of the bringing of said suit or action.

7. Company agrees to pay a reasonable attorneys' fee to the firm of Marsh, Marsh & Dashney for their services rendered Parkers in connection with their representation of the Parkers in the adjustment of the Parkers' claim under said policy and the protection of Parkers' rights under this agreement

8. The Company shall refund to Parkers the amount of the premium paid for said policy of title insurance in the amount of \$430.00 in the event that the purchase of the above-described property is rescinded, or will prorate the premium in the event that Parkers retain title to Lot 1 and refund the balance of said premium, based upon the valuation set forth above.

9. Parkers agree to cooperate fully in the maintenance of the suits or actions described above and to make themselves available at reasonable times and places for the purpose of giving testimony in depositions and/or at the trial of such suits or actions, and Company agrees to pay Parkers the reasonable and necessary cost of travel and accommodations in appearing to give such testimony or appear in said trials, save and except any loss of earnings or profits.

10. In consideration of the foregoing and of the performance of the promises and agreements of the Company set forth above, Parkers hereby release, acquit and forever discharge Company from all claims and causes of suit or action of any nature or description arising out of the defect in the title to

Lot 2 above described, and upon performance of the terms hereof to execute and deliver to Company a full and final release.

11. If at any time during the performance of the above agreement or while any portion of any decree or judgment against the said Ethel Winans, and/or other interested parties, if any, and/or Walter Stegmann remains unsatisfied or while any agreement of any of the latter parties to repay the amount of the purchase price of said property and/or option remains unfulfilled, Company is in a position to convey or confirm a clear title to Lot 1 to or in Parkers, Parkers agree to accept title to said Lot 1 at the agreed valuation of \$30,300.00 therefor above and to pay Company said amount upon demand and tender of marketable title to said Lot if Parkers have theretofore received payment of the \$120,300.00 provided for in Paragraph 4 above.

In Witness Whereof, Parkers have hereunto set their hands and seals and the Company has affixed its seal and the hands of its duly authorized officers this day and year first above written.

.....

.....

“Parkers.”

TITLE AND TRUST COMPANY

By.....

Attest:

.....

“Company.”

EXHIBIT No. 9

Agreement

This Agreement, Made and executed in duplicate this day of October, 1951, by and between Chet L. Parker and Lois M. Parker, husband and wife, of Vancouver, Washington, hereinafter called "Parkers," and Title and Trust Company, a Corporation, hereinafter called "Company";

Witnesseth:

Whereas, Parkers are the owners and holders of a policy of Owner's Title Insurance, No. HR 12-987, in the principal amount of \$125,000.00, issued by Company, insuring Chet L. Parker as the owner of a fee simple estate, subject to certain exceptions set forth in said policy, in the following described real property located in Section 16, Township 1 South, Range 8 East, Willamette Meridian, in the County of Hood River, State of Oregon: Lot 1, saving and excepting therefrom approximately ten acres more or less, more fully described in said policy, and the Northeast quarter of the Northwest quarter, which will hereinafter be referred to as "lot 2"; and

Whereas, there is a defect in the title to said Lot 2 and Parkers have presented a claim against Company under said policy; and

Whereas, Parkers in support of said claim hereby represent and warrant that they paid Walter Stegmann the sum of \$25,000.00 for an assignment of an

option held by said Walter Stegmann to purchase the above-described property, a copy of which option and assignment are hereto annexed and incorporated herein marked Exhibits A and B, respectively: and that they paid their grantor Ethel Winans the net sum of \$95,300.00 for a conveyance of the above-described property; and that the total consideration paid by Parkers to the said Stegmann and Winans for said property was the sum of \$120,300.00, and that no part of said sum or other thing of value in lieu thereof has been returned to Parkers, or either of them, or to their account; and

Whereas, Parkers claim that the value of Lot 1 and Lot 2, based upon the amount of timber thereon at \$32.00 per MBF stumpage is the sum of \$120,300.00;

Whereas, the Parkers have represented to Company and hereby warrant that they had no knowledge of any defect in the title to said Lot 2 prior to their payment of the purchase price therefor and acceptance and recording of the deed to said property; and

Whereas, it is to the mutual advantage of Parkers and Company to avoid or minimize the loss resulting to them, or either of them, on account of the defect in said title to Lot 2;

Now, Therefore, in consideration of the foregoing and of the following mutual promises, the parties hereto agree as follows:

1. Parkers hereby agree and elect to rescind the

purchase of said Option from said Stegmann and the purchase of the above-described property from said Ethel Winans, and authorize and instruct Griffith, Phillips & Coughlin, or such other attorneys as Company may designate to prosecute diligently such action or suit as may be necessary or advisable, in their opinion, to effect such rescission and hereby deliver to Company a quitclaim deed conveying Parkers' right, title and interest in the above-described property to the said Ethel Winans, together with said Option and said Assignment of Option for surrender to the said Ethel Winans and Walter Stegmann, respectively, as necessary to accomplish said rescission.

2. Company agrees to pay the sum of \$110,-000.00 to Parkers on the day of, 1952, upon written request therefor and tender to Company of a properly executed Bargain and Sale deed conveying Lot 1 to Company and a properly executed quitclaim deed conveying Parkers' right, title and interest in Lot 2 to Company, with each of said conveyances to be free and clear of all encumbrances of persons claiming under Parkers and a properly executed Assignment of all Parkers' claims and causes of suit or action against Ethel Winans and all other interested parties, if any, and Walter Stegmann and the United States of America and the State of Oregon arising out of the subject transaction, or option, or purchase, or defect in title to Lot 2, and of Parkers' interest in any final decree or judgment entered in any suit or action brought pursuant to the terms hereof, together with author-

ity to continue or commence, as the case may be, suits or actions against any of the last mentioned parties or bodies politic in Parkers' name to obtain whatever remedy or redress to which Parkers or Company may be entitled.

3. In the event that the purchase of said Lots 1 and 2 is rescinded, either by agreement or by final decree or judgment in a suit or action brought pursuant to the terms hereof, and the said Ethel Winans, and/or other interested parties, if any, repay or become obligated to repay to Parkers or Company the amount of the purchase price received by them for said property or in the event of a final decree or judgment denying such relief, Company agrees to pay Parkers the additional sum of \$10,-300.00, upon written request and delivery of a properly executed assignment to Company of said final decree or judgment, if any, against Ethel Winans, and/or other interested parties, if any, and/or Walter Stegmann.

4. Company agrees to pay all costs and attorneys' fees arising out of any suit or action brought by it, pursuant to the terms hereof, in the name of Parkers, and to indemnify and hold harmless the Parkers from all loss or damage arising out of the bringing of said suit or action.

5. Company agrees to pay a reasonable attorneys' fee to the firm of Marsh, Marsh & Dashney for their services rendered Parkers in connection

with their representation of the parkers in the adjustment of the Parkers' claim under said policy which fee is to be determined by agreement between said firm and the firm of Griffith, Phillips & Coughlin.

6. The Company shall refund to Parkers the amount of the premium paid for said policy of title insurance in the amount of \$430.00.

7. Parkers agree to cooperate fully in the maintenance of the suits or actions described above and to make themselves available at reasonable times and places for the purpose of giving testimony in depositions and/or at the trial of such suits or actions, and Company agrees to pay Parkers the reasonable and necessary cost of travel and accommodations in appearing to give such testimony or appear in said trials, save and except any loss of earnings or profits.

8. In consideration of the foregoing and of the performance of the promises and agreements of the Company set forth above, Parkers hereby release, acquit and forever discharge Company from all claims and causes of suit or action of any nature or description arising out of the defects in the title to Lot 2 above described, and upon performance of the terms hereof agree to execute and deliver to Company a full and final release.

In Witness Whereof, Parkers have hereunto set their hands and seals and the Company has affixed

its seal and the hands of its duly authorized officers
this day and year first above written.

.....,

.....,

“Parkers.”

**TITLE AND TRUST
COMPANY,**

By

Attest:

.....,

“Company.”

Witnesses:

.....,

.....

EXHIBIT No. 10-A

October 15, 1951.

Marsh, Marsh & Dashney,
Attorneys at Law,
McMinnville, Oregon.

Attention: Francis Marsh.

Re: Chet L. Parker.

Gentlemen:

As we understand the present state of the adjustment of Mr. Parker's claim against the Title and Trust Company from our telephone conversation Saturday, October 13, the Parkers are still reluctant to have a suit brought in their own name and would prefer to accept the sum of \$95,000.00 on account

of the defect in title to Lot 2, and retain title to Lot 1 in their own name.

We have discussed this most recent change of Mr. Parker's views on the matter with our client, and the Title and Trust Company would prefer to dispose of the matter on the basis outlined in our conference last Friday afternoon. We have, accordingly, prepared and there is enclosed three copies of a form of agreement under which company agrees to pay Mr. Parker the sum of \$110,000.00 at the present time and the balance of \$10,300.00 at the time the decree or judgment in the suit to be commenced in the Parkers' name becomes final. In consideration of these payments the company is to be given the right to commence whatever suits as is necessary to recover the amount of the purchase price and the option money, together with an assignment of all claims of the Parkers arising out of the subject transaction and a quitclaim deed to their interest in Lots 1 and 2.

If it further develops from your further discussion in the case with Mr. and Mrs. Parker that the enclosed agreement is satisfactory, please have them sign it in duplicate and return it to our office and we will have it executed by Title and Trust Company forthwith and return one copy to your firm for delivery to Mr. and Mrs. Parker. You will note that in Paragraph 2 of the Agreement, we have left the date for the payment of the \$110,000 blank. That date should be filled in at the time the Parkers sign the Agreement to call for payment of said sum two weeks from the date that the Parkers sign, in

order that we may file the proposed law suit prior to making the payment.

If the Parkers do not wish to enter into the enclosed Agreement, we suggest that rather than attempt another conference it would be advisable to have the Parkers reduce whatever proposal they wish to make to writing and submit it to the company. It seems to us that we have had enough discussions of the matter with the Parkers that they are aware of the company's reasons for wishing to proceed in the Parker's name and the company realizes and appreciates the reasons why the Parkers wish to receive payment for their loss as soon as practicably possible. However, if either you or Mr. or Mrs. Parker feel that further conferences would be of assistance or that a written agreement could be worked out in a conference, representatives of the company and our office would be pleased to meet with you and clients at any time convenient to you. We believe that it would certainly be mutually advantageous to work out a final solution to this matter as soon as possible.

If the Parkers sign the agreement they should also furnish to you for forwarding to the company, the following documents which Mr. Parker has stated several times he has in his possession or can get.

1. The cancelled checks covering the payment of the \$25,000 option money to Mr. Stegmann and the cancelled checks covering the \$100,000 payment to Ethel Winans.

2. Evidence of the amount which the Winans paid back to the Parkers on account of the reserved portion of Lot 1. It is our understanding that this amount was \$4,700.00 but apparently there is some possibility that it might have been a little more or less. In any event, the amount should be accurately determined since it is the basis of establishing the total cost to the Parkers of Lots 1 and 2.

3. The timber cruise on Lots 1 and 2.

The Company will, of course, give the Parkers appropriate receipt for said documents and if they desire, also furnish photostatic copies.

Also, if the Parkers propose to go ahead with the enclosed form of agreement, we would appreciate your ascertaining from them the following information relative to their residence for the purpose of enabling us to determine whether or not it would be advisable to attempt a suit in Federal court based on diversity of citizenship:

1. Their present place of voter's registration and where they voted last.

2. Where they filed their United States Income Tax Returns for the year 1950.

3. Whether or not either filed income tax return for the State of Oregon for the year 1950.

4. What they maintain as their Washington address.

5. Whether or not they maintain any home or

residence of a relatively permanent nature in either Oregon or Washington.

6. Where their son went to school last year and this year.

We realize that question of domicile is difficult and that it would be up to the company to determine at its own risk whether or not, from the facts presented by Mr. Parker, there is a basis for federal jurisdiction.

Yours very truly,

GRIFFITH, PHILLIPS &
COUGHLIN,

JAMES K. BUELL.

JKB:m

Enc.

cc: Title and Trust Co.

City

1918

Chet L. Parker, et ux., vs.

EXHIBIT No. 10-B

Marsh, Marsh & Dashney,
Attorneys at Law,
First National Bank Bldg.,
McMinnville, Oregon.

October 23, 1951.

Griffith, Phillips & Coughlin,
Attorneys-at-Law,
Portland 5, Oregon.

Re: Chet L. Parker.

Attn.: Mr. James K. Buell;

Gentlemen:

Your letter of October 15, 1951, received and this matter was discussed at great length with Mr. and Mrs. Chet Parker. Mr and Mrs. Parker are not willing to sign the proposed agreement and have authorized me to submit to you this counter-proposal by way of compromise only.

Under your Title Insurance Policy No. HR 12-987, you insured that Chet L. Parker is the owner of a fee simple estate in the following described real property: The NE¹/₄ NW¹/₄ in Section 16, Township 1 South, of Range 8 East, of the Wilamette Meridian in the County of Hood River, State of Oregon. It has developed that title to this tract of land is vested in the United States of America and that a total loss of title in Chet L. Parker arises by reason thereof.

In view of the fact that the policy of title insur-

ance does not make any segregation as to the amount of insurance covering the tract described above and the other property described in said policy, it is our belief that under the law, Chet L. Parker would be entitled to recover under this policy the loss he sustained by reason of the defect in the 40-acre tract. The amount of his loss would be based upon the reasonable market value of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, not to exceed \$125,000.00.

Mr. Parker had a bona fide offer from a prospective purchaser to buy the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ for a sum of money in excess of \$125,000.00 and there seems to be no doubt but what the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, which has been referred to as Lot 2 in our previous discussions, is well worth more than \$125,000.00. Therefore, the actual loss sustained by Chet L. Parker by reason of the defect in the title to the 40-acre tract (Lot 2) is in excess of the policy limits and therefore he feels he would be entitled to receive from you the sum of \$125,000.00 and still retain title to Lot 1.

Therefore, we make a demand on behalf of Chet L. Parker for the payment of \$125,000.00 under this policy. However, as a compromise offer, Mr. Parker is willing now to accept \$110,000.00 from the Title and Trust Company because of the loss he sustained on account of the defect in the title to the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 16, Township 1 South, of Range 8 East, of the Willamette Meridian in Hood River County, State of Oregon.

If your client was to pay the \$110,000.00 to Mr. Parker, it would be subrogated to a right of action,

if any, for damages against the Winans. In this connection, the Title & Trust could bring an action for damages against the Winans because of the subrogation agreement set forth in the policy.

In other words, the net result, if this compromise offer is acceptable to the Title & Trust Company, might be stated briefly as follows: Title & Trust to pay Chet L. Parker, \$110,000.00 because of the defect in the title to the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$; the Title & Trust Company to receive, if desired, a Quitclaim Deed from Parker to the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$; the Title & Trust Company to be subrogated to any right of action Chet L. Parker may have against the Winans or any other persons because of such defect; the action against the Winans and others, if brought, to be brought in the name of the Title & Trust Company, the Parkers to testify if personally subpoenaed.

This offer is made as a compromise only and if not acceptable, Mr. Parker will insist on a payment of the sum of \$125,000.00, which apparently is his actual loss due to the defect in the title to the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$.

Very truly yours,

MARSH, MARSH & DASHNEY,

/s/ FRANCIS E. MARSH,

FRANCIS E. MARSH.

FEM:er

EXHIBIT No. 10-C

November 6, 1951.

Marsh, Marsh & Dashney,
Attorneys at Law,
First National Bank Bldg.,
McMinnville, Oregon.

Attention: Francis E. Marsh.

Re: Chet L. Parker, insured, Title & Trust Company, owners title insurance policy No. HR 12-987.

Gentlemen:

Our client, the Title and Trust Company, has considered the proposal of settlement outlined in your letter of October 23, on behalf of Mr. and Mrs. Parker and it is not acceptable.

In the absence of any other evidence to the contrary, you are apparently correct in your assertion in your letter of October 23, that the legal title to the forty-acre tract of land which we have referred to in our discussions and correspondence as "Lot 2" is vested in the United States of America subject to whatever estoppel the parties holding under the deed from the State of Oregon may have a right to assert against the government.

We believe that you are in error with regard to the question of segregation of values as to Lots 1 and 2. At the time Mr. Parker first ordered a preliminary report for a purchaser's policy of title insurance, he submitted to the Title and Trust Company an executed Assignment of Option covering subject

property from one Walter Stegmann to himself in which Lots 1 and 2 were stated to be of the value of \$35,000 and \$90,000, respectively. Accordingly, the maximum loss which Mr. and Mrs. Parker could have sustained on account of the defect in the title to Lot 2 would be \$90,000.

Mr. Parker has advised us that he has had several offers on the property, but it is our understanding that no enforceable offers to purchase the property have been made and no enforceable contract for the sale of the property has been entered into.

Also contrary to the assertion in your letter, it would appear that there is considerable doubt as to the value of Lot 2 being in any event greater than \$90,000. In view of Mr. Parker's very positive assertion at the conference between himself, Mr. Dashney of your firm and Mr. Alstadt of the Title and Trust Company and the writer on September 28, that there is no question in his mind that Lot 1 was worth the full \$35,000 and that he would like to keep it based on that valuation.

The Title and Trust Company has attempted to approach this question with the utmost good faith. We point out that the Company took the initiative to contact Mr. Parker and bring the question of a possible defect immediately to his attention as soon as the Company learned of it. In the course of attempting to work out an agreement for a mutually satisfactory solution to this problem the Company has relied completely upon Mr. Parker's represen-

tation as to the amount of his loss and his representations as to the value of the two tracts.

We believe that the Company is entitled to have Mr. Parker furnish proof of loss and evidence in support. He has repeatedly referred to cancelled checks evidencing the payment of \$125,000.00 and of a timber cruise showing the stumpage and values of the timber on the subject property, and has agreed to permit us to examine these items. We request that this be done soon at some time convenient to yourself and your client.

We have attempted to avoid the necessity of having the amount of money which Mr. Parker has invested in this property tied up in the course of lengthy litigation over the amount of his loss. To that end we have proposed several alternative methods of proceeding which have been orally agreed to by Mr. Parker and then subsequently repudiated. Our offer, however, is still the same and our client is still willing to go ahead with the agreement forwarded to you with our letter of October 15, 1951.

Yours very truly,

GRIFFITH, PHILLIPS &
COUGHLIN,

JAMES K. BUELL.

JKB:m

1924

Chet L. Parker, et ux., vs.

EXHIBIT No. 10-D

November 26, 1951.

Marsh, Marsh & Dashney,
Attorneys at Law,
First National Bank Building,
McMinnville, Oregon.
Attention: Francis E. Marsh.

Gentlemen:

The numerous changes of mind on the part of Mr. and Mrs. Parker relative to their claim of loss under the owner's policy of title insurance issued by the Title & Trust Company, No. HR 12-987, together with other evidence which our client has discovered, indicates to our client that the Parkers have not made a full disclosure to this Company and have not dealt with the Company in good faith. The Company has, therefore, instructed us to notify your firm as the attorneys for Mr. and Mrs. Parker, that its offer to enter into an agreement with Mr. and Mrs. Parker in accordance with the form of agreement enclosed in our letter of October 15th and resubmitted in our letter of November 6th, is hereby withdrawn.

Yours very truly,

GRIFFITH, PHILLIPS &
COUGHLIN,

JAMES K. BUELL.

JKB:m

cc: Mr. Chet L. Parker,
106 East 33rd Street,
Vancouver, Washington,
Mr. Chet L. Parker,
McMinnville, Oregon.

EXHIBIT No. 15-A

[Editorial]

Hood River Daily
Sun

Thursday, Sept. 20, 1951

[Sun Masthead]

Lost Lake Timber

Yesterday the Daily Sun revealed that the new owner of the only privately owned large block of timber on Lost Lake had invited loggers to consider purchasing the timber and logging the 55 acres he has purchased. Strange as it may seem the man himself is quoted as saying that he is only interested in the property as a home site.

Before the new owner goes too far with his plans, we think it might be smart for him to take the general public into consideration. Lost Lake is one of the beauty spots of the Northwest, it is one of Hood River Valley's greatest natural resources. If the land is owned by this Chet L. Parker, the forest service has no jurisdiction over the property whatsoever and Parker can make a hideous gash in the virgin forest surrounding the lake.

The destroying of the beauty of Lost Lake is not an issue that the citizens of Hood River County should let go by the boards without some effort to stop.

EXHIBIT No. 15-B

[News Clipping From Hood River Sun—Oct. 1.
1951.]

\$250,000 Will Buy Lost
Lake Timber and Land

"You were pretty rough in your editorial about the Lost Lake timber deal on my friend, Chet Parker," a pleasant little fellow in a big hat told the Daily Sun late this afternoon. "I represent Parker and if the people of Hood River County are concerned about keeping the beauty of Lost Lake, they can buy the timber and the land or they can ask the forest service to trade Parker some other timber land for the Lost Lake property."

"What would Mr. Parker consider a fair price for the timber and property?" we asked the representative.

"Well, we figure the timber is worth \$180,000, lots of peeler logs up there, and the land should be worth \$70,000, nice lake frontage. That would make a total deal of around \$250,000. I think Mr. Parker would consider that a fair price," he said.

"Of course," he went on, "if the forest service would like to trade for some other timber property, we would be happy to talk business with them. Of course, it would have to be equal to what we value the Lost Lake property."

It has been speculated for some time that the reason that Parker had purchased the Lost Lake timber was to force the forest service into a trade

for other timber that he had his eye on. Previous to the visit of timber broker Bonnie Butler of Prineville to the Daily Sun office and his above statements, Parker has maintained that the purchase on Lost Lake was for a private retreat and that he was not interested in logging.

The forest service very often does trade timber as Butler suggests.

EXHIBIT No. 15-C

[News clipping, Hood River Sun—Oct. 15, 1951]

Forest Service Says 40 Acres Theirs

The United States Forest Service has notified Chet Parker by registered letter that 40 of the 55 acres of Lost Lake property he thought he purchased recently from the Winans family "has never passed from federal ownership." Yet, Parker has title insurance on the property. This information was related to the Daily Sun by Mr. and Mrs. Chet Parker, who called at the Sun office Saturday.

Parker still has undisputed ownership to about 15 acres which he claims has been damaged by someone raising the lake and flooding better than an acre of it.

The story of the 40 acres that is under dispute as can be pieced together from several sources is as follows:

Each section 16 and 36 in each township were

given by the federal government to the state. Sometimes when the land was inaccessible the federal government gave them another section in place of either 16 or 36. That was the case with the Lost Lake property apparently from the federal government point of view. Apparently this information did not get to the proper people in the state government, for the state, according to some people, sold the land to an individual. This individual sold it to the senior Winans 53 years ago and the Winans have been paying taxes on it since that time.

Parker explained that there might have appeared a discrepancy between the amount of money that Winans received and the amount of money that was evidenced by the internal revenue stamps paid on the money that was actually paid for the land, but he had had to pay a party by the name of Stegmann \$25,000 for an option he held on the property in addition to what he paid the Winans.

EXHIBIT No. 15-D

[News clipping, Hood River Sun—Dec. 11, 1951]

Suit to Settle Title Started

In the suit to clarify the status of the ownership of the land on Lost Lake which was sold by the Winans family to Chet L. Parker and wife, the Title and Trust Company, who issued title insur-

ance on the property, has brought suit against everyone connected with the ownership of the land from the year 1859 when Oregon was admitted to the union down to the present transaction with the exception of Macrum and the senior Winans, who are both dead.

The title and trust company issued title insurance on the property to the extent of \$125,000 and now they find they cannot produce a clear title, so they are asking federal courts, where the suit is filed, to solve the problem as to who owns or has owned the property.

Named as defendants in the suit are the Winans family, Walter Stegman, the Parkers, the county of Hood River, the state of Oregon and the United States.

The story of the property as outlined in the complaint in short form follows.

When Oregon was admitted to the union in 1859, the federal government granted sections 16 and 36 to the state for use as school lands, if these sections were not already sold or otherwise disposed. The land involved in the suit is in section 16. The complaint states that at the time of the entry of the state into the union this land belonged to the federal government.

It should be made clear that not all of the property comes under question of title. Fifteen of the 55 acres involved in the sale is clear. It is the 40 acres that were not mapped before being sold by the state to the Macrums that is being discussed.

In 1889, the complaint states, the state sold all of

the land involved in the transaction to Charles A. Macrum. At that time the property went on the Hood River county tax rolls and has been on ever since.

Prior to June 17, 1892, no government survey had been made of this section. On this date the land in section 16 was all set apart and included in that portion of the Mt. Hood National Forest known as the "Bull Run Timber Reserve."

In 1902, the complaint says, the land was conveyed by Chas. A. Macrum to W. R. Winans by Warranty deed.

In 1907, the document says, the state of Oregon selected another more accessible forty acres in central Oregon and traded the federal government this tract for the 40 acres in section 16 near Lost Lake. This is the same land that the document claims was sold to Macrum in 1889, who later sold it to Winans.

The title in 1943 was transferred to Ethel Winans by W. R. Winans.

The complaint states that in 1943, Ethel and Paul Winans asked and were supplied by the Pacific Title and Trust Co., working through its agent, the Hood River Abstract Co., title insurance in the face amount of \$8,000 on all of the property involved in the transaction.

The Winans asked the Forest Service to exchange the Lost Lake property for other government timber lands, which is not an unusual practice where the Forest Service wants to save a stand of timber for recreation or beauty. On January, 1944, the

Forest Service notified Winans that the government owned 40 acres of the land he wished to trade.

The Winans came back on the title insurance company and were awarded \$3,000.

The complaint goes on to say that in August, 1951, the "Winans falsely represented to defendant Walter Stegman that they were the owners of a merchantable title." They gave Stegman an option to buy all of the property at this time.

On August 13, the option was signed over to Chet Parker. The complaint states that the Winans, Stegman and Parker all knew of the title difficulties and did not tell the title and trust company.

The Sun is authorized to state by a person having full and complete knowledge of the facts that the correct status of the title to the entire property was meticulously represented by the sellers to the buyer at every phase of the negotiations and sale.

EXHIBIT No. 18

[Exhibit 18 is a certified photostatic copy of the plat of survey of lands in T. 1 S., R. 8 E., W.M., in Oregon. A copy of the material portion is attached to the amended complaint as Exhibit A.]

1932

Chet L. Parker, et ux., vs.

EXHIBIT No. 19

Mason, Bruce & Girard
Consulting Foresters
American Bank Building
Portland 5, Oregon

December 22, 1952.

Mr. James K. Buell,
Griffith, Phillips & Coughlin,
Electric Building,
Portland 5, Oregon.

Dear Mr. Buell:

On November 12, 1952, you requested our firm to make an intensive cruise and valuation of certain designated timber lands in Hood River County. The field work was completed immediately because even a minor snowstorm at that elevation would make the tract inaccessible until next spring. Enclosed are two copies of our cruise summary report on this property.

Sampling Procedure

Quarter-acre sample plots were taken at each $\frac{1}{2}$ tally interval along travel lines which crossed the property eight times. On each plot, diameters, tree heights, and defect and breakage were carefully taken. Log grades were taken on a portion of these plots uniformly distributed throughout the tract.

Volume

The merchantable net volume on the three tracts is shown as follows:

Mercantable Net Volume M'BM

Description	Acres	Species						Total
		DF	WF	WRC	WH	WP	NF	
Sec. 16, T. 1 S., R. 8 E.								
NE NW	40.	640	205	481	537	46	43	1,952
N. Part Lot 1	15.	160	152	229	140	36		717
S. Part Lot 1	10.88		63	130	13	18		224
Total	65.88	800	420	840	690	100	43	2,893

Values

In arriving at a value for the entire tract and for each parcel independently as of September 11, 1951, sales of similar timber over a wide area were considered. Problems such as road development costs, logging costs, markets and other factors which influence stumpage values in the immediate vicinity were also given careful consideration.

Development costs are high due to the necessity of constructing approximately one mile of high standard logging road, and installing a bridge or large culvert at the crossing of the Lake Branch of Hood River.

Following are four tables which in my opinion show the net volume and values on a per thousand board foot basis as well as total volume and value per tract.

Valuation of the entire tract (Table I) and of NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 16 (Table II) was based on a reasonably sizable operation. The road and bridge construction mentioned above would be essential for the removal of either of these tracts. Valuation of the north and south portions of Lot I

(Tables III and IV) were based on a small "gypo" type of operation.

Table I

NE $\frac{1}{4}$ -NW $\frac{1}{4}$ & Lot 1, Sec. 16, T. 1 S., R. 8 E.

Species	Volume M'BM	Stumpage per/M	Total Value
Douglas Fir	800	34.00	\$27,200.00
White Pine	100	16.00	1,600.00
West Red Cedar	840	14.00	11,760.00
West Hem. Noble Fir & White Fir	1,153	4.00	4,612.00
Total	2,893		\$45,172.00

Table II

NE $\frac{1}{4}$ -NW $\frac{1}{4}$ Sec. 16, T. 1 S., R. 8 E.

Species	Volume M'BM	Stumpage per/M	Total Value
Douglas Fir	640	30.00	\$19,200.00
White Pine	46	12.00	552.00
West Red Cedar	481	10.00	4,810.00
WH-NF-WF	785	1.00	785.00
Total	1,952		\$25,347.00

Table III

North Portion Lot 1, Sec. 16, T. 1 S., R. 8 E.

Species	Volume M'BM	Stumpage per/M	Total Value
Douglas Fir	160	32.00	\$ 5,120.00
White Pine	36	15.00	540.00
West Red Cedar	229	13.00	2,977.00
WH-NF-WF	292	3.00	876.00
Total	717		\$ 9,513.00

Table IV

South Portion of Lot 1, Sec. 16, T. 1 S., R. 8 E.

Species	Volume M'BM	Stumpage per/M	Total Value
White Pine	18	13.00	\$ 234.00
West Red Cedar	130	11.00	1,430.00
WH-NF-WF	76	2.50	190.00
Total	224		\$ 1,854.00

We are keeping a rough copy of the cruise and the work sheets in this office. If we can be of any further service to you, please let us know.

Very truly yours,

MASON, BRUCE & GIRARD,

/s/ LYLE A. CUMMINGS.

EXHIBIT No. 20

[Exhibit 20 consists of thirteen cards, each entitled "Timber Scale Record," showing cruises of various properties by Mason, Bruce and Girard, together with an original and carbon copy of a sheet entitled "Timber Appraisal — Title and Trust." The substance of the latter is incorporated in Exhibit 19.]

1936

Chet L. Parker, et ux., vs

EXHIBIT No. 21

United States District Court

District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,

Plaintiff,

vs.

CHET L. PARKER, et al.,

Defendants.

DEPOSITION OF WALTER STEGMANN

taken on behalf of plaintiff.

April 26, 1952—May 20, 1952—July 12, 1952

* * *

A. I can't recall what discussion there was.

Q. You cannot recall whether or not you arrived at any agreed valuation for the timber on the two tracts or property? A. I don't remember.

(Discussion off the record.)

Q. Do you remember whether or not the assignment that you gave to Mr. Parker made any reference to a valuation of the two tracts of timber?

A. I can't remember whether it did or not.

(Copy of assignment dated August 13, 1951, signed by Walter Stegmann, was thereupon marked Stegmann Deposition Exhibit No. 2,

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

and the same is attached hereto and returned herewith.)

Q. (By Mr. Buell): Would you take Exhibit No. 2 that the Reporter has just handed you and read it and see if that refreshes your memory? Let me advise you that what you have before you marked as Exhibit No. 2 bears the typewritten designation "Exhibit B" and purports to be a copy of the assignment which you gave to Mr. Parker and it is a copy that is attached to the complaint in this case.

After seeing that, does that refresh your memory at all as to whether or not there was any reference to the segregation of values for Tract No. 1 and Tract No. 2 in the actual assignment which you gave to Mr. Parker and signed that Monday [67*] evening?

A. The reason that there was for this——

Q. First of all, answer my question as to whether or not you can positively state as to whether or not in the actual assignment that was delivered to Mr. Parker there was that segregation of values which is set forth on that Exhibit No. 2 which you have in your hand?

A. If there was, from memory I couldn't remember that, but if that is a copy there, there must have been some discussion.

Q. Do you recall the discussion at all, any actual

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

discussion between you and Mr. Parker that night on that particular question?

A. It seems like that back piece, away from the lake there, was considerably better than what was down towards the water's edge.

Q. This assignment, Exhibit No. 2, purports to set a value of \$90,000 on the 40-acre tract and \$35,000 on the 25-acre tract. Whose figures were those? Were they yours or Mr. Parker's?

A. I don't remember exactly on that.

Q. Do you remember deciding in your own mind that the timber on the 40-acre tract was worth \$90,000?

A. I know the timber that would be on the 40 acres was worth more than what was on the smaller piece.

Q. Do you recall anything at all about arriving at those particular figures, those two amounts, \$90,000 and \$35,000? [68]

Q. (By Mr. Buell): You say Mr. Parker paid you \$25,000 for your assignment. Is that right?

A. Yes.

Q. When did he pay it to you?

A. That evening.

Q. Did he give you a check? A. Yes.

Q. Just a personal check of his own?

A. Yes.

Q. On what bank?

A. It was on The First National Bank of McMinnville.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. The check was payable to whom?

A. Payable to me.

Q. To you alone? A. Yes.

Q. What did you do with that check?

A. As I remember, I cashed it.

Q. Cashed it?

A. And there was some bills I had to pay.

Q. Where did you cash it?

A. McMinnville.

Q. When?

A. I don't remember the exact date.

Q. Was it within a day or two of the date it was given to you? [69]

A. No, it was several days later, I believe.

Q. Was it within a week?

A. I can't remember exactly.

Q. Was it within two weeks?

A. It may have been.

Q. Was it within three weeks?

A. I can't remember the exact date.

Q. What did you do with the money? Did you put it in your account?

A. No. You mean deposit it?

Q. Yes.

A. I used it for paying some outstanding bills I had.

Q. Well, I was going to come to that in a minute. First of all, did you get actually the sum of \$25,000 cash in your possession when you cashed the check, \$25,000 in currency?

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

A. There was \$4,000 that I paid—there was \$4,000 that I had to pay for the purchase out of the \$25,000.

Q. That left a balance of \$21,000 that you received, is that right? A. Yes.

Q. Did you deposit that full \$21,000 in the bank, in any bank?

A. As I remember, I don't believe I did. I received cash.

Q. You carried it around on your person?

A. No.

Q. What did you do with it? [70]

A. I started paying bills.

Q. Did you put any part of it in a safety deposit box? A. Yes.

Q. In what bank?

A. Oh, we had a deposit box of our own at home.

Q. And that is where you put it?

A. What was left.

Q. What bills did you pay with the money?

A. Gosh, I can't remember exactly.

Q. Do you have receipts for the bills which you paid? A. I think I have.

Q. Where are they?

A. I think with the rest of my papers.

Q. You say at the time you agreed with Mr. Parker that of the \$25,000 you would take \$4,000

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

of it to make the initial payment for the exercise of the option? A. Yes.

Q. Where did you put that \$4,000?

A. That was at the bank.

Q. You put that in your own personal account?

A. Yes.

Q. When did you draw a check for the \$4,000?

A. I forget now when it was. I don't remember the exact date.

Q. But that was a check on the First National Bank of Portland, McMinnville Branch, for \$4,000, is that correct? [71] A. Of Portland?

Q. The McMinnville Branch?

A. I think so. It was the McMinnville bank.

Q. What is the name of the bank?

A. The First National Bank of McMinnville.

Q. Would you please state now as many of the creditors that you paid off with this money as you can? A. No, I can't remember.

Q. Approximately how much money or how many debts did you have at the time you sold this option to Mr. Parker?

A. I don't remember the exact amount.

Q. You could not give any estimate?

A. No.

Q. You did not have \$21,000 worth of debts, did you? A. No.

Q. After you got through paying your debts and setting aside the \$4,000, how much money did you have left?

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

A. I don't remember the exact amount.

Q. What is your best estimate of the amount that you had left?

A. I was purchasing other timber and stuff, so I don't remember the exact amount.

Q. Do you still have an account in The First National Bank of McMinnville? A. No.

Q. No? [72] A. No.

Q. When did you close it?

A. I don't remember when.

Q. What was the next bank account you opened up after you closed the one with The First National Bank of McMinnville?

A. I don't have a bank account.

Q. You have no bank account now?

A. No.

Q. At the time that you sold your option to Mr. Parker, did you have any bank account other than the one at The First National Bank of McMinnville? A. No.

Q. No? A. No.

Q. Have you had any other bank account since that time? A. No.

Q. You cannot give us any estimate whatsoever of the amount of debts that you paid off with this \$25,000? A. No.

Q. Could you state whether or not the amount of money you paid in the discharge of debts exceeded \$5,000? A. I can't remember exactly.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. You mean it may have been less or it could have been more? A. I don't remember.

Q. I beg your pardon? [73]

A. I said I don't remember whether it would be or not.

Q. All of these debts were paid in cash, is that correct? A. Yes.

Q. What? A. Yes.

Q. You don't know whether you have all the receipts? A. No.

Q. Are all the receipts you do have in one place?

A. I think so.

Q. How long would it take to get them?

A. I don't know.

Q. You mean it would be something you could get together in a couple of hours or in a day?

A. It would probably take several days, I imagine.

Q. Where are the various places in which those receipts are located?

A. As I remember, I had them in a box. I think they are stored with some furniture we have stored.

Q. Over in Vancouver? A. Yes.

Q. Do you have any at your residence in Vancouver now? A. No, not that I know of.

Q. Do you have any at McMinnville?

A. No.

Q. You have had no bank account of any kind since you closed [74] your account with The First National Bank of McMinnville? A. No.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. You say you spent some of this money on other timber that you acquired? What timber is that? A. Some in Southern Oregon.

Q. Where is the tract in Southern Oregon located? A. Around Grants Pass.

Q. Whom did you purchase it from?

A. Clay Brown.

Q. How much did you owe for it?

A. I don't remember the exact amount now.

Q. Approximately how much did you pay for it?

A. I think the figure was \$12,000, I believe.

Q. Did you pay cash for it? A. Yes.

Q. \$12,000 in currency?

A. I believe it was, if I remember.

Q. Or whatever the exact amount of the purchase price was? A. Yes.

Q. Have you sold that tract?

A. No, not as yet.

Q. Did you purchase title to the land with the timber on, or was that just a cutting contract or a timber contract? A. Just the timber.

Q. You just owned the contract? [75]

A. Yes.

Q. And where is that contract located?

A. It should be with the rest of my stuff.

Q. You have not assigned that to any other person yet? A. Not now.

Q. Does any other person other than yourself have any interest in that timber? A. No.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. Do you have any agreement to split any profits that you might make on the sale or disposal of that timber with any other person? A. No.

Q. Have you acquired any other timber other than this Clay Brown tract?

A. I have an agreement on one or two others.

Q. What are they?

A. What do you mean?

Q. Would you designate where the tracts are and whom you acquired the agreements from?

A. You mean the location?

Q. Yes. A. One is in California.

Q. Whereabouts in California?

A. It is Fortuna.

Q. Where? [76] A. Fortuna.

Q. What kind of an interest do you have in that tract? A. That is just a contract.

Q. Did you pay anything for it? A. No.

Q. Whom did you acquire the contract from?

A. I can't think of his name right now. It is to be as a cutting contract.

Q. Where is that contract located?

A. It should be with my other papers.

Q. Where is the other tract that you have an interest in now?

A. That is at—I can't think of the name of the town. It is around Orick.

Q. Where is that? Is that in California?

A. Yes.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. Whom did you acquire that from?

A. I have an agreement to purchase it.

Q. From whom?

A. From Kelly, I believe his name is.

Q. Do you know his first name?

A. Bill—William.

Q. Do you owe anything under that agreement?

A. Not yet.

Mr. Ryan: Mr. Buell, I know we have reserved objections on the question of relevancy, but I think I will instruct him [77] not to answer some of these questions.

(Discussion off the record.)

Mr. Ryan: I request, on behalf of the defendant Stegmann, that this deposition be continued until the conclusion of Mr. Jaureguy's case in Eugene, the title of which I do not know, and that the further taking of depositions be reserved until the conclusion of the case, at which time Mr. Stegmann will be available for the continuation of his deposition. Is there any objection, Mr. Buell?

Mr. Buell: No objection. [78]

* * *

Q. (By Mr. Buell): Mr. Stegmann, when we concluded the first part of your deposition several weeks ago, we were covering the question of what disposition had been made of \$25,000 which you testified Mr. Parker paid you for the assignment

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

of your option to purchase the Winans' property to Mr. Parker.

Out of that sum you stated you had paid \$4,000 to the Winans at the time you exercised the option, and that you [80] had expended the approximate sum of \$12,000 for the purchase of a tract of timber or an interest in a tract of timber from Clay Brown in Southern Oregon.

As to the rest of the funds, which would leave a balance of about \$9,000, you were unable to specify as to how much of it you had left or how much had been paid for the bills which you stated you paid after you cashed Mr. Parker's check.

In the meantime have you refreshed your recollection at all as to what disposition was made of the rest of that money?

A. Yes. I think I was a little confused. Do you want the grocery bills and traveling expenses and——

Q. We would like as complete an accounting of the \$25,000 as you can make. If you have a written accounting, that would shorten it, and that would be preferable.

A. Well, after going over it and thinking more about it, I remembered that I borrowed on a note from Mr. Parker, and this \$25 was in payment for that note.

Q. How much was payment on the note?

A. The \$25,000.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. You repaid the entire \$25,000 to Mr. Parker then?

A. Excuse me a minute. Should I explain it? Shall I explain it in detail or just answer the question? The whole thing? I was wondering—maybe I didn't make myself clear.

The \$25,000 was repayment of money that I had borrowed [81] from Mr. Parker. I sold him the option and the money that was received from this option, I sort of gave it to him as payment for the note I had when I borrowed the money previous.

Q. What was the face amount of that note?

A. It was somewhere over \$20,000. I forget the exact amount, \$22,000 or something.

Q. When was that note given to Mr. Parker?

A. I believe it was in 1950, the latter part.

Q. And at the time you assigned your option to Mr. Parker, had you made any payments on the principal of that note?

A. I don't remember. It wasn't due yet for, I believe, another month or two.

Q. At the time you repaid the money to Mr. Parker, did you receive the note? A. No.

Q. Where is the note at the present time?

A. I think Mr. Parker has it.

Q. Do you have any receipt from Mr. Parker for the money that you paid him?

A. No. If I have, I haven't been able to find it.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. Did you receive a receipt? Did you have a receipt that you remember?

A. It seems like there was. I remember he marked it "Paid" or something on the back.

Q. On the note? [82] A. Yes.

Q. But he retained the note?

A. He retained the note.

Q. Did you actually see him endorse "Paid" on the back of it? A. Yes.

Q. About when did that take place?

A. As I remember, I think it was the latter part of September of 1951.

Q. I want to make sure, Mr. Stegmann, whether or not, in addition to marking "Paid" on the back of this note, Mr. Parker also gave you some written receipt for that money?

A. I believe he did, but I just can't quite remember now.

Q. How was that money paid to him?

A. I endorsed his check back to him that he gave me for the \$25,000. I was a little confused there on the cash. I had borrowed cash from him previously and, as I said, the note was in payment for cash I had borrowed from him. I mean the check——

Q. Then, in fact, you never actually cashed the \$25,000 check that you testified he gave you for the assignment of the option?

A. No, it was in return for cash that I had.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. What I mean is that, instead of taking the check and endorsing it and taking it in to the bank and drawing out the \$25,000, you simply endorsed the check back to Mr. Parker, is that correct?

A. Yes. [83]

Q. Then where did you get the \$4,000 that was paid to Mr. Winans at the time the option was exercised?

A. I also had another note with Mr. Parker to borrow up to—I think it was \$10,000. I didn't want to pay interest only on what I used, so I had arrangements to draw the checks against this note and they would be honored through the bank.

Q. When was that note you just referred to signed?

A. I believe it was in the first part of the year of 1951, probably April or May—I am not sure.

Q. Where is that note at the present time?

A. I don't have no copy of it.

Q. Does Mr. Parker still have the note?

A. I think so.

Q. Was that note in the possession of Mr. Parker or was it in the possession of the First National Bank of McMinnville when you were drawing the checks against it?

A. That I don't know.

Q. Were you present at any meeting between Mr. Parker and a representative of the First National Bank of McMinnville when the arrange-

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

ments were made for you to be able to draw checks which would be honored by this loan commitment which Mr. Parker had given you?

A. Will you make that a little more clear, please?

Q. To go back a moment, didn't you just testify, in order to avoid having to pay interest on the money Mr. Parker was going [84] to loan you, that you had made an arrangement that he would withhold the money and that when you would draw a check on the bank the bank would apply the money that Mr. Parker had agreed to put up in payment of your check?

A. I don't quite understand that.

Q. I am sorry. Maybe I don't, either. Would you explain in your own words just what this loan arrangement was between you and Mr. Parker and the bank?

A. Well, I had this note with Mr. Parker, and the bank was to honor the checks up to a certain amount on this note.

Q. Was that a joint agreement between you, Mr. Parker and the bank?

A. The note was between me and Mr. Parker.

Q. How would the bank then get the money to cover your checks?

A. He had an account there, I believe—whether he left the note at the bank I don't know, but anyhow the checks were honored, and that was all I was interested in, to see that they were paid.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. Were you present at any time when Mr. Parker made arrangements with the bank to cover your checks there, present at any meeting with a representative of the bank?

A. I don't remember any meeting.

Q. Those checks of yours were all drawn on the First National Bank of McMinnville? That is right? A. Yes. [85]

Q. Did you, yourself, have any meetings or discussions with any representative of that bank in connection with your account?

A. I don't remember.

Q. How much money did you draw against this \$10,000 note that you were just referring to?

A. I remember \$1,000 that was paid to Paul Winans and the \$4,000 that was paid to him. I don't remember any others.

Q. Was there any other money drawn against that note? A. I don't remember.

Q. All you can recall drawing against the \$10,000, then, is the \$5,000 you just mentioned?

A. That is all I can recall just at the moment.

Q. What is the balance of that note at the present time? A. I don't remember that.

Q. Have you got any idea?

A. I don't remember whether it was paid off and discontinued now.

Q. Did you ever make any payment on that note?

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

A. Yes, out of the \$25,000 there was some money paid on that note.

Q. Your testimony now, then, is that a portion of the \$25,000 represented by the check of Mr. Parker that you endorsed back to him was credited on this \$10,000 note you have just referred to? [86]

A. I think it was, that \$4,000.

Q. Do you have any receipt showing that?

A. I don't remember whether I do. I believe I do.

Q. Where is that?

A. I think I would have it probably at home.

Q. Referring back a minute to the first note which you stated was given sometime late in 1950, are you able to definitely state what the face amount of that note was?

A. No, not the exact amount; I am not able to say the exact amount of that. I think it was around twenty or twenty-two thousand dollars.

Q. And of that amount, \$20,000 or \$22,000, whatever the face amount was, what was the unpaid balance at the time you turned back this check, endorsed back this back for \$25,000 to Mr. Parker?

A. I don't believe there was any of it that was paid. It had not become due yet.

Q. Is it your testimony that this \$20,000 or \$22,000 note was paid in full by the endorsement back of this \$25,000 check? A. Yes.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. You were given full credit on the entire net balance, whatever the exact amount was, plus any accrued interest, at the time you gave Mr. Parker back his check for \$25,000? A. Yes.

Q. In addition, you testified that approximately \$4,000 was [87] also credited to this second note for \$10,000? A. Yes, I believe so.

Q. You think you have receipts for those credits signed by Mr. Parker somewhere in your belongings, is that correct? A. I think so.

Q. Have you made any attempt to look for them? A. Yes.

Q. Were you able to find any of them?

A. I have not.

Q. Where did you look?

A. I looked around my home.

Q. Where else is there for you to look for them?

A. I have some things stored and I haven't gotten it all out of storage yet.

Q. Have you got any of your things out of storage? A. Yes, some.

Q. Did you look among those things, as you got them out, for these receipts?

A. Yes. I think, also, if there was any payment he would mark it on the back of the note.

Q. Was there any reason why this \$20,000 or \$22,000 note, which you state was paid in full by this transaction—was there any reason why that was not returned to you?

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

A. No, I don't remember only that I didn't get it and that he kept it. [88]

Q. On August 13, 1951, the date of the assignment of this option, did you have any other notes payable to Mr. Parker other than the two you have just mentioned this morning?

A. No. I don't remember.

Q. Were you indebted to him in any additional amount other than as covered by those two notes? In other words, did you owe him any additional money that was not covered by a note?

A. Not that I remember of.

Q. Did you owe anybody else any money other than Mr. Parker?

A. I believe I did to other people.

Q. In any substantial amounts, amounts exceeding \$1,000?

A. Yes, I believe so.

Q. On August 13, 1951, aside from the two notes which we have discussed this morning, the two notes payable to Mr. Parker, what was the approximate amount of the other obligations, the approximate total amount of your other obligations other than your obligations to Mr. Parker?

A. I can't remember.

Q. Would they exceed or would the total exceed \$10,000?

A. I don't know. [89]

* * *

Q. Had Mr. Parker credited you with the \$20,000 or \$22,000, whatever it was, on these two notes

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

prior to the time he advised you about the title question?

A. Yes, because I think he credited me for that in the latter [135] part of September, I believe, and it was about a month or two before he told me anything about having trouble with the title. [136]

* * *

Q. Did Mr. Parker have any interest in or connection with your purchase of the Clay Brown timber in Southern Oregon? A. No.

Q. Did he advance you any money? [141]

A. No.

Q. Where did you obtain the money to acquire that timber?

Mr. Ryan: I will repeat my instructions, Mr. Stegmann, not to answer questions that are not relevant to the transaction with Mr. Parker or any questions regarding your general business.

(Question read.)

Mr. Buell: You are instructing him not to answer the last question?

Mr. Ryan: Yes. That was a question with regard to the Clay Brown property.

Mr. Buell: As to where he got the money?

Mr. Ryan: Yes. [142]

* * *

Q. At the time we took your deposition you testified, with respect to the \$25,000 check—Page 69

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

of your deposition—you testified you had cashed it. That is the way you testified on that date.

What I am getting at is this: On that date you testified to receiving and cashing the check, and in another place you testified about placing some money in a deposit box. However, today you have given a different version, that the check was endorsed back to Mr. Parker.

I wish you to explain what happened in the interim to cause you to give that different [148] version.

A. As I say, I was under the impression that it was the same as cash, the check. I was paying back a loan that I had received in cash and I was under the impression—I might have been confused—that it was cash. [149]

* * *

Q. (By Mr. Lindsay): I am not clear how you got in touch with Chet Parker after you signed the option agreement.

A. I thought I explained it before, that I met him at my place [196] in McMinnville. I believe it was Sunday.

Q. Saturday you signed it and Monday is the next day that the option signing took place, so that there was Sunday intervening?

A. As I remember, he came over to his brother's place. His place adjoins my place in McMinnville. I was out working in the lawn. Each week end,

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

sometimes, I would go down to take care of the lawn, and he happened to come over to his brother's place.

Q. Yes.

A. And he asked me—I was out there working and he naturally seen me and he would say something, rather than go on by, of course. He wondered how things were going and I mentioned to him that I had this tract of land.

Q. Yes.

A. And he wanted to go and look at it. He said he might be interested in it.

Q. He had not seen you for some time?

A. Quite some time.

Q. And didn't you know where you were?

A. No.

Q. He didn't know you had been up to Hood River?

A. Not that I remember, unless someone—someone could have told him, but I never did tell him.

Q. Didn't you have him in your mind as a possible purchaser of the option, or as someone who would lend you the money, when [197] you went into it?

A. Well, it was possible. He was buying [198] timber, too.

* * *

Q. I don't quite understand how you arrived at the \$25,000.

A. I just thought that was reasonable and a

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

good price for the option. It was worth about approximately one-fourth——

Q. In you experience in buying timber rights and selling options, have you found you generally get about a quarter of the price you agree to pay for the property or timber? A. Quite often.

Q. You are sure of that? There was no discussion between yourself and Parker about the \$25,000? A. No.

Q. He didn't think it was too high?

A. Not after he looked at the timber, he didn't think it was. [202]

* * *

Q. The first time you had any occasion to discuss those two tracts of land was the time you signed your option?

A. He asked me which I thought was the best timber—which piece of property had the best piece of timber, I mean the larger trees, and I told him I thought the best part of it was on the back 40. It is logical, I mean, for timber people or land-owners or others to say “40 acres here” and “40 acres here,” regardless of whether they have 400 acres or not; they kind of offset it by 40's.

Q. And that is the reason why this particular option assignment shows these values that way, is that it? That is your explanation?

A. Yes. As I say, that back 40 was worth more. It is a better grade of timber.

Q. What I want to know is this: Is that the

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

reason why that particular valuation was entered in this option assignment, why it was broken up into two tracts? [204]

A. As I remember, it must have been.

Q. And that was discussed by you and Mr. Parker?

A. There was a slight discussion there, yes.

Q. You recall that discussion clearly now?

A. After reviewing this, yes.

Q. I think last time you were a little hazy about it.

A. I couldn't remember, from memory. [205]

* * *

Mr. Buell: Was Mr. Stegmann able to find any receipts?

Mr. Ryan: Mr. Stegmann has not been able to find receipts. I suggest you ask him about that.

Mr. Buell: Right. What about the Clay Brown contract?

Mr. Ryan: Mr. Stegmann has not been able to find the Clay Brown contract as yet. He is still searching for it. [234]

* * *

Q. This Clay Brown contract that you referred to the first time you appeared for your deposition, was that also oral?

A. I am sure I have a copy of that contract.

Q. But you cannot locate that?

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

A. No. I am going to continue to search for it and if I can I will try to obtain another copy.

Q. Where is the original of that contract?

A. It would be with those receipts and stuff that I had because I had most of them all in one [240] place.

* * *

Q. Where does Clay Brown live?

A. I think he lives at Grants Pass. [241]

* * *

Q. When was it you purchased your interest in this Clay Brown property?

A. About the last of this year—I mean last year, or the first part of this year. I don't remember which. [247]

* * *

Q. Do you have any record of the equipment that you owned at the time you borrowed the \$20,000 or \$22,000 from Parker?

A. I don't have.

Q. Do you know where a record of what that equipment was could be found?

A. I did have some of my receipts, but I just can't find them.

Q. You did not sell any of that equipment in 1951? A. I don't remember that I did.

Q. I beg your pardon?

A. I don't remember. It seems like some of it was, but I am not sure.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. How much logging equipment do you own at the present time? A. I don't have any now.

Q. You do not have any now? A. No.

Q. When was the last of it disposed of?

A. The first part of this year.

Q. The first part of 1952?

A. I believe it was.

Q. Did you sell it? A. Yes.

Q. To whom?

A. I sold some to my brother.

Q. What did you sell to your brother?

A. I think all I had was the power saw and some rigging. [248]

Q. How much did your brother pay for it?

A. I don't remember exactly.

Q. Did you sell any of it in 1950?

A. Some was sold in 1950.

Q. What was sold then?

A. I don't know exactly what was sold then, but I remember some being sold.

Q. To whom? A. I don't know his name.

Q. Was it a substantial amount of the equipment? A. It was quite a little bit.

Q. Approximately how much?

A. I don't just remember.

Q. And you don't remember how much was sold in 1951? A. No.

Q. You say that aside from this Winans transaction and the loan arrangement that you had with Mr. Parker from time to time on the Arthur prop-

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

erty and the loan of this \$20,000 or \$22,000 and the \$10,000 loan commitment that he gave you before you went up to Hood River, that those were the only business dealings of any kind that you had with Mr. Parker? Is that right? A. Yes.

Q. You say that the only time that he employed you to do anything for him or the only time which you acted as his agent in any capacity was when he employed you to survey the lines of [249] this reserved portion of the Winans tract, is that right?

A. The only time I ever worked for him, hired to do anything, was when I was to set out this reserved area on the Winans property. [250]

* * *

Q. I want you to tell me in specific detail exactly how you spent that \$22,000.

A. Well, I just don't know, only that I spent some road building.

Q. How much? I am going to ask you three questions with respect to every item: How much, to whom did you give it and when was it given?

Mr. Ryan: Let him refresh his memory by looking at the income tax return (Stegmann Deposition Exhibit No. 8).

A. \$11,325 was for road building and fire trails.

Q. (By Mr. Lindsay): You spent that much of the \$22,000 in road building? A. Yes.

Q. All right. When did you spend those amounts, up to when?

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

A. I don't know exactly.

Q. Why don't you know exactly?

A. I just don't know.

Q. When did you build the roads, Mr. Stegmann?

A. Well, it was in the forepart of 1951, I believe it was. [256]

Q. In the forepart of 1951? You did no more road building after June, 1951, say?

A. I don't know.

Q. What is that answer?

A. That I just don't know.

Q. Mr. Stegmann, we have got to get some specific answers about this \$22,000 if we can. You spent \$11,325 on road building. To whom did you pay this?

A. That was paid to John D. Bailey.

Q. Where does Mr. Bailey live?

A. I don't know. He was from around Roseburg, I believe.

Q. Where did he do this road building?

A. As I said before, I think it was up on Peavine and Coast Creek.

Q. Would you explain where Peavine and that other location——

A. Peavine is on Route 3, McMinnville.

Q. What is the other location you mentioned where you did some road building?

A. Up on Coast Creek.

Q. Coast Creek? A. Yes.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. Where is that?

A. Well, that is just south of Peavine a couple of miles or about four, something like that.

Q. You contracted with this man to do the road building and [257] paid to him this entire \$11,325, is that correct?

A. Yes.

Q. You believe that was done prior to, say, July, 1951?

A. I just don't know. Some of it was done at different times.

Q. Was some of it still going on in August and September, when you were dealing with the Winans?

A. I don't know.

Q. You do not know?

A. No.

Q. Do you know when you made your last payment to this road builder?

A. I believe it was in the middle of the summer.

Q. Was it before or after August 11, 1951?

A. I just don't know.

Q. How would you find out?

A. Well, if I could find my receipts and what not, but I am not able to find them.

Q. How did you pay this road builder?

A. That was paid in cash.

Q. You received a receipt from him?

A. Yes.

Q. Did he make a duplicate of the receipt, a carbon copy of it?

A. I don't remember.

Q. But he gave you a receipt? [258]

A. I am sure.

Exhibit No. 21—(Continued)

(Deposition of Walter Stegmann.)

Q. Did you pay him more than once?

A. No, I don't believe so.

Q. You made a lump-sum payment of \$11,325. You had never advanced him any money?

A. Well, I don't remember.

Q. Mr. Stegmann, you can certainly remember whether you paid the man \$11,325 or whether you paid him in certain installments, can't you?

A. I just don't remember.

Q. You want to stand on that answer?

A. I don't know. I don't remember whether—it has been quite a little while and I just don't remember. [259]

* * *

EXHIBIT No. 22

United States District Court

District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,

Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, WALTER STEGMANN, ETHEL WINANS, PAUL and ELLA O. WINANS, Husband and Wife; LINNAEUS WINANS, R. C. ELDER, STATE OF OREGON, HOOD RIVER COUNTY, a Political Subdivision of the State of Oregon, and the UNITED STATES OF AMERICA,

Defendants.

DEPOSITION OF CHET L. PARKER

One of Defendants

Taken in behalf of Plaintiff.

* * *

Q. (By Mr. Buell): First of all, I might ask you whether or not you have had an opportunity to read a copy of the transcript of Mr. Stegmann's deposition in connection with this case?

A. Most of it.

Q. When did you first meet Walter Stegmann?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I wouldn't know.

Q. Do you know where you first met him?

A. No, I wouldn't remember at all.

Q. You have no idea how long you have known him? A. No, I wouldn't exactly.

Q. Did you first meet him socially or in a business way or in just a casual way?

A. Well, since I don't remember when I met him I wouldn't know how I met him.

Q. When was your first business transaction of any kind with Mr. Stegmann?

A. That is purely a guess, but I would think probably in 1949, or thereabouts.

Q. What kind of a transaction was that?

A. It seems like it was—he was loading out some logs that originally belonged to me. I sold some cold decks to [7*] the Willamina Lumber Company.

Q. You say you sold Mr. Stegmann some cold decks?

A. No. It was in connection with some loading that he might have accomplished for the Willamina Lumber Company concerning some cold decks that I sold the Willamina Lumber Company. Now whether there was any—whether he dealt indirectly with me on that through the Willamina Lumber Company I don't know. I can't remember exactly, but it is possible he did.

Q. As I understand that transaction, you are not

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

sure as to whether Stegmann was doing the loading for you or for Willamina Lumber Company?

A. Well, Willamina Lumber Company purchased the logs from me, and whether the loading was figured in against the cold decks I don't know. However, I didn't pay Stegmann nor any of his help or have any written agreement of any kind with him. [8]

* * *

Q. What was the next occasion that you had to do any business with or have any association with Mr. Stegmann?

A. I loaned him some money on a logging job at Gopher Valley. I think that probably was the next time, or the first one I had anything to do with, that is.

Q. The Gopher Valley tract that Stegmann was working was the Arthur timber, was it not? [10]

A. That was part of it. I don't remember—I am not sure whether the principal deal was with Arthur, Arthur timber, or not. It seems like it was Murphy-Nelson, maybe. I am not sure. It was thereabouts in that area, yes.

Q. When did you make that loan?

A. I don't remember exactly. It seems like sometime in '49; the last of '49, as I remember.

Q. How much did you loan him?

A. I don't remember that exactly.

Q. Approximately how much did you loan him?

A. Well, it wasn't over \$10,000.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Was that a loan on a note?

A. No, that would be paid back on a per-thousand basis, as I remember. I am not sure about that, even. I suppose it was secured by a note.

Q. You don't remember whether it was or not?

A. No, I don't remember. I think it was, but I am not sure.

Q. Was that money advanced directly to Mr. Stegmann or to the owner of the timber or some other party?

A. No, it was directly to Mr. Stegmann.

Q. In cash?

A. Yes. By "cash" do you mean by check or in so many dollars?

Q. Let's break it down. Can you tell whether it was in actual currency or was it by check? [11]

A. By check, as I remember.

Q. Do you still have the canceled check?

A. I suppose so.

Q. Now, was that advance or loan secured by anything other than a note?

A. As I remember, it involved the timber or his contract on the timber.

Q. An assignment of the contract? Or a pledge?

A. Well, I am just a layman. I wouldn't know the terms of the thing. But it had to do with the timber, using the timber as security, with a supplemental thing, or something.

Q. How were the repayments made? By that I mean did Mr. Stegmann make them to you person-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

ally or did he make an order on the party to whom he sold the timber to pay you so much per thousand out of what he was getting, or what was the arrangement regarding that?

A. Well, as I remember, it was to be paid to me directly from the mills, so much per thousand.

Q. Do you remember which mills were involved?

A. No, I don't.

Q. Approximately when was that loan repaid?

A. I don't even remember that. I don't remember at all.

Q. Had it been repaid by the time of the purchase of the Winans timber? A. Yes. [12]

Q. Had it been repaid prior to the time Mr. Stegmann assigned his option on the Winans timber to you? A. Yes.

Q. Did you have any other interest in Mr. Stegmann's logging of the Gopher Valley timber other than getting your loan repaid? A. No.

Q. Did you receive any interest on that loan?

A. I don't remember whether the contract was on a per-thousand basis, us to put up the money for the road, using that as the basis for the total payoff, or whether it was on an interest-bearing basis. I don't remember. It was one or the other.

Q. Was that where the proceeds of the loan were used, in building a road into the property?

A. Yes.

Q. Did you participate at all in the laying out

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

of the road or the actual building of it or the running of the work to have it built?

A. No. As I remember, he submitted to us a traverse.

Q. When you say "to us" whom do you mean?

A. To my wife and myself.

Q. You and Mrs. Parker?

A. And we sent a cruiser in to cruise the timber.

Q. Did you supervise in any way the building of the road?

A. Absolutely none whatsoever. [13]

Q. How about the logging of the timber?

A. None whatsoever.

Q. Can you give us any estimate at all as to when that particular loan was repaid? A. No.

Q. What was the next business transaction you had with Mr. Stegmann?

A. It seems like—oh, yes. I believe the next one—of course, I am not sure about each and every one, but, as I remember, the next one was a cash loan. I loaned Mr. Stegmann, as I remember, \$22,000.

Q. Approximately when was that loan made?

A. Well, I don't remember exactly. Right away after the logging was completed, or thereabouts, on this Nelson piece.

Q. What did Mr. Stegmann tell you he wanted to use the money for, if anything?

A. I don't remember.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. How was that loan made? Was it all paid to him at once or what?

A. Yes, all paid to him at once.

Q. Again by check? A. No, by cash.

Q. Where did you obtain the cash to loan him the \$22,000?

A. You want to know each and every place?

Q. Yes.

A. Some of it—approximately the first of it was obtained, [14] I guess, in 1937.

Q. Excuse me a minute, so we won't have any misunderstanding. This probably might help you in answering the question. I don't believe I asked you whether or not that was all paid to Mr. Stegmann at the same time.

A. As I remember, you did ask it. It was paid to Mr. Stegmann at the same time.

Q. Now, when I say where did you obtain the money I am not referring to particular profitable business dealings that you had had in the past, but what I am referring to is whether or not you drew it all out of the bank at any one time or whether you drew part out of the bank and got part from another source. Do you understand? Do I make myself clear?

A. No. That was an accumulation of cash over a period of years, and I can tell you practically where all of it came from, each item.

Q. You go ahead and answer the question.

A. It started in approximately 1937, as I remem-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

ber. I cut wood for 90 cents a cord for the first part of it. My wife helped. In 1938 I sheared sheep for 8 cents apiece, and I accumulated it, and my wife helped. And I sold off some of my estate property and accumulated some of it. I accumulated some of it in 1942 on Midway Island. Other items were furniture we had sold, personal items, to that total, and exceeding that total. There was some left. [15]

Q. As I thought, you misunderstood the question. I will try to make it clearer. When you gave Mr. Stegmann this \$22,000 where had you gotten the cash yourself?

A. I got it out of my safe deposit box or, rather, my wife did, as I remember.

Q. At that time you also had a checking account in the bank, did you not? A. Yes.

Q. Was there any particular reason for getting it out of your safe deposit box instead of out of your checking account?

A. Well, there was a personal reason. I thought it had just as well be earning some money as lying in the cash reserve.

Q. Was that all of the money you had in your safe deposit box? A. No.

Q. How much additional funds did you have in your safe deposit box at that time?

A. I don't remember exactly at that time.

Q. Approximately how much did you have?

A. Oh, approximately probably ten thousand more.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. You say you don't recall what, if anything, Mr. Stegmann said he wanted to do with the money?

A. Well, it had to do with his business, as I remember.

Q. Did you receive a note for that loan?

A. Yes. [16]

Q. And where is that note at the present time?

A. It is in my attorney's office.

Q. Did you receive any security for the payment of that loan other than a note?

A. Yes, as I remember.

Q. What was the other security?

A. Equipment, as I remember.

Q. When you say you received equipment as security, what kind of a security transaction was it? Was it a mortgage or a bill of sale conditioned on the payment of the note, or what?

A. A mortgage, I suppose. I know we drew it. I don't know what it was. We used that for security, anyway.

Q. You and Mrs. Parker drew it?

A. My wife drew it.

Q. Without the assistance of any attorney?

A. There was no attorney anywhere around.

Q. Was that recorded? A. No.

Q. What equipment did it cover?

A. I don't remember.

Q. Did you inspect the equipment before you loaned the money? A. As I remember, I did.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Where did you have to go to inspect it?

A. That I don't remember. I faintly recollect inspecting it.

Q. You can't remember what equipment it was at all? [17]

A. No. It seems like a yarder was involved.

Q. Do you remember where the yarder was located?

A. No, I don't.

Q. Do you remember what kind of a yarder it was?

A. I don't believe that I do.

Q. Was it a used piece of equipment?

A. Yes, as I remember, it was.

Q. How much was it worth?

A. That I don't even remember.

Q. Did you calculate what you thought to be the estimated value at that time of the various equipment that was to be used as security for this note?

A. No. No, not that I remember, I didn't. I felt it was all right.

Q. Did you think it exceeded the actual amount of the note?

A. I thought it was security enough for what I had loaned him. [18]

* * *

Q. Would you explain, if you can, what the little hole is in the upper left-hand corner of the note?

A. Well, a hole is a hole. How can it be anything but a hole?

Q. That is a good answer. Would you explain how the hole got there more specifically.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Well, presumably it was torn. I wouldn't know. I never made it out. It was erased or something. I don't know.

Q. You are unable to account for that at all?

A. No, I wouldn't be able to. My wife made the note out. She may possibly make mistakes now and then and have to erase a little.

Q. Was this mortgage which has been marked Deposition Exhibit 2 for Identification made out or prepared at the same time that the note was?

A. As I remember.

Q. Were those documents actually prepared and signed on the date indicated?

A. Yes, it must have been. It says so.

Q. I think, Mr. Parker, you have been in business long enough [22] that you know such documents as deeds, mortgages and contracts are frequently dated as of an effective date but are not actually signed until sometime afterwards or on some occasions sometime before. My question is, so far as you can recall was the note and mortgage actually made out and signed on November 20th, 1950, on the date on which they are dated?

A. Yes. This was signed on the date which is indicated, or within a day or two. Maybe they might have been mixed up on just one particular day, or I don't know—maybe an evening or something, or maybe the next morning. But I know within a day or two. That is definite. We never did have any

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

contracts that we signed as a matter of prior or future arrangement that I remember of.

Q. Did you give Mr. Stegmann \$22,000 on the same day that the note and mortgage were executed?

A. Well, or else the next day, right then or the next day.

Q. Within a very short time after?

A. Within 48 hours.

Q. Do you recall whether it was you or Mrs. Parker or both of you who went to the safe deposit box to draw out the money?

A. It possibly was my wife. I wouldn't remember, but it possibly was.

Q. But you were present when the money was paid over?

A. As I remember, yes. [23]

* * *

Q. (By Mr. Buell): Coming back now to the \$22,000 loan, was that mortgage which has been marked as Deposition Exhibit 2, the only security that you received other than the note?

A. Yes.

Q. Then would you explain what the transaction was that is noted at the bottom of the mortgage under date of April 20, 1951, acknowledging an additional \$1,500 loan.

A. What was that loan?

Q. Yes.

A. I don't remember. I don't remember at all.

Q. Do you remember whether or not you ob-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

tained a note in connection with that \$1,500 loan recited there? A. I don't remember. [24]

Q. Before you advanced the \$22,000 to Mr. Stegmann, did you make any investigation of his credit standing? A. Yes, I did.

Q. What kind of an investigation did you make?

A. Well, among the people that he had been doing business with locally.

Q. Can you recall any of the particular persons that you contacted?

A. Oh, the Willamina Lumber Company, and Otto Heider. That is about all I remember right now. There was others, but that is two that I remember.

Q. What did you determine his credit standing to be at the time you made that loan?

A. Slow, but very good.

Q. Did you attempt to figure out at all what his net worth was?

A. No; no, not to the exact dollar.

Q. Did you attempt to determine whether or not his assets exceeded his liabilities at that time?

A. Yes.

Q. You found that he was rather heavily in debt at that time, did you not?

A. Well, considering his assets, I thought, no.

Q. Did you find that he had any assets other than the property that was mortgaged to you? [25]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Yes, there was other assets.

Q. Was there any reason for not including those in the mortgage?

A. This is what he wanted to make, and it was acceptable to me.

Q. This mortgage, Deposition Exhibit 2, purports to cover a converted Willamette yarder and a 200-horsepower Diesel engine. You still have no recollection as to where that was located at that time?

A. No, I don't remember.

Q. Do you have any idea what you decided that was worth?

A. No. No, I don't. I felt that there was security enough, that the items were security enough, plus the note.

Q. Was it in good condition?

A. Well, I don't remember. It was usable.

Q. Approximately what would it have cost you to have gone out on the market at that time and purchased a yarder and engine comparable to those?

A. I wouldn't know.

Q. Do you have any recollection now as to where the Austin road grader was located?

A. No. No, it was on some of his jobs somewhere, but I wouldn't know where.

Q. Did you actually inspect that yourself, also?

A. As I remember; or I had seen it previously. At some time [26] I had inspected it.

Q. Do you know what a comparable road grader

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

would have cost you if you had gone out and purchased it on the market at that time?

A. No. No, I am not an equipment dealer. I wouldn't know.

Q. What was the next business transaction you had with Mr. Stegmann following this loan of \$22,000?

A. Well, I suppose it was that \$1,500 written on the bottom of it. I don't know.

Q. I take it from your prior answer to my question you don't have much recollection at all about that \$1,500 transaction?

A. No. I think my wife loaned it to him. I don't remember a thing about it—right now, anyway.

Q. Then, aside from this \$1,500 transaction, what was the next business transaction you had with Mr. Stegmann?

A. Well, it seems like I loaned him some money on some more equipment, it seems like, or else on a note, concerning a \$10,000 deal or commitment of some kind. I forget the details. I think we have the note on it, if there is another one. [27]

* * *

Q. (By Mr. Buell): Mr. Parker, did you ever look at Mrs. Johnson's timber? A. Yes.

Q. When did you do that?

A. I don't remember.

Q. Was it before or after the checks payable to Mrs. Johnson had been cleared through the bank

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

pursuant to your loan arrangement with Mr. Stegmann? A. It was previous.

Q. With whom did you look at the property?

A. Mr. Bob Walker.

Q. Who is he?

A. He is a cruiser, timber cruiser.

Q. Where is he located?

A. Fenton Building, Portland, Oregon.

Q. How did you first learn of the Johnson tract?

A. In what connection?

Q. That it was potentially for sale?

A. I never did learn it was for sale. [32]

Q. How did you happen to go look at it?

A. Through strictly the invitation of Mr. Bob Walker.

Q. He contacted you and suggested that you go down and look at it; is that correct?

A. Well, I don't know whether he contacted me or not. At least he suggested I go along with him.

Q. There were just the two of you that went to look at it?

A. The two of us looked at it. His wife went along, rode along in the car.

Q. Did Mrs. Parker go along?

A. I don't believe so.

Q. How long prior to Mr. Stegmann's purchase of the timber did you look at it?

A. Oh, I wouldn't remember. Quite a little bit.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. By "quite a little bit," you mean several years?

A. Oh, no.

Q. Or several months?

A. Several months.

Q. At the time you looked at it, did you discuss the possibility of purchasing it with Mrs. Johnson at all?

A. No.

Q. Did Mr. Walker tell you it was for sale?

A. Not that I remember.

Q. Why did he want to go look at it?

A. Just to accompany him to look at it. [33]

Q. When he looked at it, did he cruise it?

A. Yes, he cruised it.

Q. Did he tell you for whom he was cruising it?

A. No, he didn't.

Q. Did you ever discuss this Johnson tract of timber with Mr. Stegmann prior to the time that he drew these checks in favor of Mrs. Johnson?

A. I never discussed this tract of timber with Stegmann at any time.

Q. I take it that he contacted you after he drew the checks so that you could notify the bank that the three checks that have just been marked as Deposition Exhibit 5 could be honored?

A. He contacted me, yes.

Q. You knew who Mrs. Johnson was at that time, didn't you?

A. I had met her when I was with Mr. Walker.

Q. Did Stegmann tell you that he was going to

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

purchase her timber when he asked you to clear the checks through the bank? A. No.

Q. And you didn't ask him anything about it?

A. No.

Q. Do you know what subsequent disposition Mr. Stegmann made of that timber?

A. I don't remember.

Q. Do you know whether or not it was [34] resold?

A. Yes, I think it was resold. I don't remember the particulars on it at all.

Q. Did you obtain any share of the profits on the resale?

A. I had nothing to do with the profits whatsoever. [35]

* * *

Q. Now, that would be four loan arrangements: The first loan of something less than \$10,000 that you referred to, the loan of \$22,000, the advance of \$1,500 which is noted at the bottom of the mortgage securing the \$22,000 advance, and this \$10,000 loan commitment. Had you ever had any other business dealings with Mr. Stegmann prior to the purchase of this Winans timber other than those four transactions? A. You mean directly or indirectly?

Q. Both. [36]

A. Both. Yes, my brother loaded some logs for Mr. Stegmann and used my loader.

Q. Your brother did what?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Loaded some logs for Mr. Stegmann, using my loader. It is a little indirect, I would imagine, but——

Q. When was that done?

A. I don't remember.

Q. Was that while he was logging the Gopher Valley tract?

A. I think maybe previously, but I am not sure.

Q. Do you know of any other actual logging operations that Mr. Stegmann conducted since your acquaintanceship with him, other than this Gopher Valley tract?

A. Not that he actually operated. I don't know. I wouldn't remember. I didn't know much about his business, so I wouldn't know.

Q. You have never loaned Mr. Stegmann any other money other than what you have told us about here this morning?

A. Well, indirectly through this loading I did. I paid my brother and then I took a second mortgage on his dwelling. If that would be considered a loan, then I loaned him some money.

Q. That is your brother Oscar, is it?

A. No, that is my brother Charlie. Charles W. Parker.

Q. Where does Charles live?

A. Near Buell, Oregon. [37]

Q. How much did you pay him?

A. I don't remember exactly. Thirty-some-odd

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

hundred, it seems like. It involved business arrangements with my own brother, between my brother and myself. But anyway, Mr. Stegmann owed the loader thirty-five hundred, as I remember it, or thirty-six hundred, somewhere in there. [38]

* * *

Q. Can you think of any other business dealings, direct or indirect, that you had with Mr. Stegmann?

A. How much time do you want to allow me to refresh my memory on it? Right at this moment I don't. Maybe I can think of one if you will give me a little time.

Q. Keep that in the back of your mind and I will come back to it later on in the deposition.

Mr. Jaureguy: I don't like to interrupt, but perhaps just for the sake of continuity, and so that this may be done prior to any conference I might have with Mr. Parker, could I [39] produce a document and show it either to you or to him?

* * *

Q. (By Mr. Buell): Mr. Parker, the Reporter has just marked as Deposition Exhibit 7, a contract which was handed to me by Mr. Jaureguy, dated March 23, 1950, between Walter Stegmann, Chet Parker and Rutheford Logging Company, to which is attached a document entitled "Statement of Amount Due on Mortgage from Stegmann to Parker," also dated March 23, 1950. I take it [40] from reading through that contract that it had some-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

thing to do with the first loan that you told us about, and on which you were not quite sure as to the amount.

A. Yes, it was pertaining to that.

Q. Do you need time to read through that to refresh your recollection as to the terms of that?

A. I don't know as I ever read the terms, but I don't believe so.

Q. How did it come about that you entered into that agreement?

A. Well, Stegmann wanted to quit logging and sell timber.

Q. Do you know how much timber there was left, approximately, on the Arthur tract, when that agreement was entered into?

A. Well, it would purely be approximate. Probably a million feet, or thereabouts.

Q. Had Stegmann's operations up until the time he entered into that contract with Rutheford been unprofitable? A. I don't know.

Q. Referring to the statement of account on the back of the mortgage, there is a recital there as due on the original mortgage, two thousand nine hundred some-odd dollars. Upon seeing that and refreshing your memory, can you give us any more specifically the amount of the actual, original loan?

A. No, I wouldn't remember at all. It was less than \$10,000, as I remember. [41]

Q. Then, apparently, you had been making addi-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

tional advances for some of the logging operations as well as the road work; is that correct?

A. I think this had to do all with the road.

Q. Is this a correct statement of the status of your account with Mr. Stegmann at the time this Rutheford contract was entered into?

A. It appears to be, yes.

Q. Don't these other sums indicated here for falling and bucking, and various sums set opposite the names of the individuals mentioned on there, represent additional advances that you made?

A. No, they don't represent additional advances. They represent money that I had to pay to keep the timber in a salable condition, or keep my contract in a salable condition.

Q. To keep the Arthurs from being in a position where they could foreclose the contract?

A. That is right. Since I had the contract for security, why, I had to more or less pay these, which I did.

Q. Did you actually hire the fallers and buckers?

A. No, I had nothing to do with the hiring of anyone whatsoever on that job.

Q. Were those sums paid to the workmen individually by yourself, or were they paid to Stegmann, who, in turn, paid his workmen? [42]

A. I think every one of these was paid to the people that is itemized here. There was withhold-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

ing tax. No doubt I paid that to the Government. [43]

* * *

Q. What type of business transactions have you acquired your money in?

A. Almost everything that you could do.

Q. What do you mean by that?

A. Well, there wasn't no definite reason to it. Anything I could make a dollar at, that is what I was doing.

Q. What have you done to make a dollar at?

A. You want it in detail?

Q. Yes.

A. Well, it concerns grain, farming, cattle, livestock, timber and logs, equipment, mechanical, and loans of all kinds, roadbuilding, construction, and various other smaller items. [52]

* * *

Q. Since that time, you have purchased many, many various tracts and interests in timber, have you not?

A. I don't know what you mean by many, but it has been more than one.

Q. You couldn't give an accurate statement of the number of timber transactions that you have been involved in, could you?

A. Yes, I think so.

Q. Approximately how many?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Well, it would take a little while to write them all down so I could memorize them.

Q. Well, how many?

A. Can I take ten minutes to think it over and tell you exactly how many? Do you want to know approximately or exactly? [53]

Q. Approximately.

A. Well, approximately, I suppose, a hundred. Up to now, you mean?

Q. Yes. A. Yes. That is purely a guess.

* * *

Q. You have been involved in litigation before this lawsuit, haven't you? A. I think twice.

Q. You have had occasion to seek legal advice frequently in the course of your business transactions, haven't you? [54] A. No.

Q. You have had occasion to seek legal advice on other occasions than the one or two lawsuits you mentioned that you had been involved in?

A. Not to a great extent, by any means.

Q. Have you conducted most of your various business transactions, then, without the assistance of legal counsel?

A. I would say about half and half.

Q. You feel that in 50 per cent of the cases, whatever the exact figure would amount to, in cases where you have not resorted to obtaining legal advice, that was because you felt that you were sufficiently familiar with business practices that you didn't need it? A. No.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Then what was the reason for not obtaining legal advice?

A. Well, my wife is somewhat familiar with that, for one reason, and the next reason was the amount of money they charge for that advice. And some people don't want any attorneys represented, the people I have been dealing with. They want to deal directly and solely with the man you are dealing with.

Q. Many of those transactions in which you have not had any legal advice, involved sums of money in excess of \$10,000, haven't they?

A. A few of them.

Q. Do you and Mrs. Parker collaborate jointly on all of your [55] business transactions?

A. Not always.

Q. Generally, do you?

A. I suppose, generally, you would say so.

Q. When did you first meet Paul Winans?

A. I don't remember the exact date. I believe it was on August the 18th.

Q. Where did you meet him?

A. In front of his—well, up where he lives up there. Supposedly, I guess he lives there.

Q. How did you happen to go up there?

A. Because that was the time that election to purchase was supposed to be signed and the amount of the \$4,000 check turned over to him, and I was

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

going to be the man that he was dealing with from then on.

Q. About what time of day was it that you got up there? A. Well, it was in the evening.

Q. Was Mrs. Parker with you?

A. I don't think so.

Q. You can't recall for sure about that?

A. No, I don't recall for sure.

Q. Was anybody else with you when you went up, or did you go up alone? Other than the possibility that you don't know whether or not Mrs. Parker was with you, was there anybody else? [56]

A. No one else was in my car when I drove up there, other than my wife that might have been there.

Q. Who had made the arrangements for you to go up there?

A. As I remember, I made the arrangements to go up there. I am not sure if I called Winans or he me.

Q. With whom?

A. With Mr. Winans, as I remember.

Q. Did you talk to him?

A. I called him on the phone, as I remember.

Q. Where did you call him on the phone from?

A. I don't remember.

Q. When did you call him on the phone?

A. I don't even remember that.

Q. Do you think it was the day you went up there, or sometime previously?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Oh, it was previous to that, but very recently.

Q. But an actual arrangement had been made, had it, that you were to go up there and he would be there?

A. Yes.

Q. In other words, you didn't just take the chance of running up and finding him at home?

A. No. I probably would have run that chance, but there was an arrangement made to meet there.

Q. Had you arranged to meet anybody else at that time?

A. Meet anyone else at that time? You mean somewhere else other than that? [57]

Q. No, at Paul Winan's place.

A. No, no.

Q. When you talked to Mr. Winans on the phone, what did you tell him?

A. I don't remember the exact words. I told him that I was involved in that deal; that I was going to take it over and Stegmann was going to pay him the \$4,000, and I was going to take the deal over. I was going to come up there late in the afternoon, as I remember telling him, and I was going to see that Stegmann turned over—gave him the \$4,000 check, and that he distinctly understood that from then on he was dealing only with me.

Q. You told him that on the telephone?

A. Yes, because he was curious.

Q. What day of the week was that, do you remember?

A. Oh, I don't remember what day of the week it was.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. When you got to Paul Winan's place, who else was there?

A. Well, as I remember, Stegmann was there, and Carl—let's see. There was two Stegmanns there, Carl and Walt, I believe, and Paul Winans. I believe both Stegmanns were getting ready to leave. I am not too sure about that. They hadn't left yet. They were there. Maybe others were there; if so, I did not know them.

Q. When you arrived, had the \$4,000 been paid?

A. Yes.

Q. Did you obtain a signed copy of the notice of election to [58] purchase at that time?

A. It was shown to me.

Q. To whom was it given?

A. Pardon me?

Q. Who got the signed copy?

A. I don't remember whether I got it or who got it. It seems like I got it.

Q. What happened after you arrived there? In other words, what was said and how long were you there?

A. I can't remember everything, but I remember one thing distinctly, in the presence of Mr. Stegmann and Mr. Winans, Mr. Paul Winans, that from that time on, Mr. Winans was dealing with me on the purchase option, this option that Mr. Stegmann had from Mr. Winans. And the discussion came up about title to the properties, and he said he would

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

furnish an abstract. I told him I wanted title insurance. He said, "Well, I have a policy now of \$8,000"—as I remember, he said \$8,000—"on it now." He says, "I am not interested in buying any more title insurance, but we will give you an abstract." I says, "I am not interested in getting an abstract. I will take care of it." Our business was very brief, and I left.

Q. Did he show you the policy of title insurance he had on it?

A. No, but he hunted for it. [59]

Q. Was anything said at that time by Mr. Winans about there being any question about the title?

A. Question about the title? You mean the title not being any good?

Q. Yes.

A. No, nothing mentioned at that time about any title not being good. In fact, just the reverse was told me; that it had a very excellent title, he had title insurance, and he could give me an abstract, both.

Q. About how long were you up there that evening, altogether?

A. I don't remember. Probably a half-hour. [60]

* * *

Q. Who left first?

A. I don't remember. What do you mean, first? Do you mean Paul Winans or myself?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Or Stegmann or his brother.

A. I don't know which one left first. I don't know. I know Stegmann was there when I told Mr. Winans that. I did ask Mr. Stegmann if he signed that, and he said he did. And they wanted me and for him to sign the top one, too, on that thing, and I said no, he was dealing with me now, and Stegmann had nothing to do with that deal on top, whatever it was. I don't know what it was now.

Q. The deal on top of what?

A. On that election to purchase.

Q. I will hand you a copy of the notice of election to purchase, Mr. Parker, and ask you to designate, if you will, what it was they wanted you to sign. [61]

A. They wanted me to sign that line right there. He wanted Mr. Stegmann first to sign on this line, and then he wanted me to sign on this line.

Q. That was after you had arrived, and after the \$4,000 check had been delivered to Winans?

A. Yes.

Q. When you say, "this line," you are referring to a blank line at the bottom of the first paragraph under "Notice of Election to Purchase"?

A. Yes. As I understood this, this is two separate agreements, and both have a separate heading, even though they are both on the same page.

Q. They were on the same page in the original

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

document, too, were they not? A. Yes.

Q. Had Paul Winans and Ethel Winans signed the two lines beneath the acknowledgment of notice?

A. As I remember, yes.

Q. At the time you arrived there?

A. As I remember, yes.

Q. You say they first asked Mr. Stegmann to sign the notice and he refused?

A. Either they told me—you see, they discussed it there. Stegmann said, "I have nothing to do with that any more. Why should I sign it?" And I came along and they wanted me to [62] sign it. I told him I had the money to pay for it and it wasn't necessary to sign anything.

Q. They actually showed you the original document? A. Yes.

Q. And Stegmann's signature was not on it?

A. Not on here, no. There was no signature here. When I left, there was still no signature here.

Q. When you say, "here," you are referring to the signature line beneath the "Notice of Election to Purchase"? A. Yes.

Q. Did you get a signed copy of the notice of election to purchase, that night?

A. As I remember, yes.

Q. You don't think Stegmann took it with him?

A. No, I am sure he didn't. I am sure I took it with me. [63]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. When did you first learn that he had acquired an interest in or an option on Winan's timber?

A. Well, it was on Sunday——

* * *

The Witness: It seems to me like it was on August the 13th or 14th, but I am not sure of the date. It was on a Sunday. I remember it was Sunday.

Q. (By Mr. Buell): We have a calendar here, I think, showing that August 12th was Sunday.

A. Then it must have been August 12th.

Q. If you want to refer to it at any time to refresh your recollection, go ahead. Where were you when you first learned of it?

A. I was at my brother's place in McMinnville, Oscar Parker, Brockwood Hill.

Q. That is close to where Stegmann's house was located?

A. Within about 200 feet.

Q. How did you happen to go over to your brother's that morning? [64]

A. I don't know why I happened to go over there. I go there quite frequently.

Q. Did you know that Stegmann was going to be home that morning?

A. I certainly did not.

Q. Stegmann hadn't called you the day before?

A. He possibly could have called me, but not anything to do with being home.

Q. Did you stop by Stegmann's house?

A. No, I didn't.

Q. Where was he when you saw him?

A. I believe he was either hoeing his corn, or else mowing his lawn. I am not sure which.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Did you see him when you were going, or when you were coming?

A. I don't remember whether I was going or coming, either one. I believe I was standing out there, just being there.

Q. What did he say?

A. Well, he said, "Hello," I guess.

Q. Anything else?

A. And made some discussion about some equipment he had of my brother's, as I remember, and walked in the shop.

Q. Whose shop?

A. My brother's little shop there. And the discussion came naturally around to timber, and he said he had a piece of timber [65] that he would like to—that he was going to sell. I got interested very readily. I indicated to him I would like to take a look at it.

Q. Did he tell you where the timber was located?

A. He told me up around Hood River County, and he told me it was good timber. And I knew that he should know what good timber was, and I was interested.

Q. Was anything else discussed?

A. I wouldn't remember. There possibly could have been other things, but apparently of no consequence.

Q. Did you make arrangements to see it?

A. Yes.

Q. When?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. The next morning, as I remember it. [66]

* * *

Q. Then, when you met Stegmann in Hood River the following morning, did you go right up to the property? [68]

A. Yes.

Q. Did you have any trouble finding it?

A. No, no, because he drove his car up and I just followed him.

Q. That was August 13th?

A. Well, I don't know whether it was—it was the following day, anyway, after that Sunday.

Q. It was a Monday?

A. As I remember, yes.

Q. How long did you spend on the property?

A. Oh, I don't know how long it was. From whatever time we got there until late evening. Well, late evening—just before dark, I would say, approximately. [69]

* * *

Q. How much timber did you conclude was on the entire tract?

A. I don't remember. It seems like, only from memory and I am not sure, but it seems like there was around six million feet.

Q. Could you give us any estimate in hours that you were up there on the property?

A. No, I couldn't. I spent a day there, a big, long day. [72]

* * *

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Did you go into the Ranger Station up there, of the Forest Service employees that first day?

A. At Lost Lake?

Q. Yes.

A. I don't know whether I did or not.

Q. Do you recall discussing the timber with any of the Forest Service employees that first day?

A. No; no, I don't remember anything about that at all. [75]

Q. Was it dark by the time you left the timber?

A. I don't remember exactly. I don't believe it was, quite.

Q. Then after you left what did you do? Where did you go?

A. I went back to Hood River.

Q. Had Mrs. Parker come up to Hood River with you that day?

A. As I remember it, yes.

Q. Did she go up on the property?

A. No, no. I know she didn't go on the property.

Q. Where did you meet her after you left?

A. I believe it was in the Apple Blossom Cafe.

Q. About what time of day?

A. Well, we had an agreement made when we was to meet, but I forget. It was late evening.

Q. Did you go directly from the timber to the cafe?

A. Yes, as I remember, I went directly from the timber to the cafe.

Q. Did you transact any other business after you

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

came out of the timber that day, and before you met Mrs. Parker?

A. No. No, I don't recall transacting any more business.

Q. After you met your wife what did you do?

A. Oh, I think I ate dinner.

Q. Then what?

A. Well, as I remember, we got into our car and drove up to The Dalles.

Q. For what purpose? [76]

A. To purchase the option of Mr. Stegmann, or the timber, that is. I believe he showed me the option on the previous Sunday. But anyway, to purchase the timber.

Q. Had you made arrangements to meet him before you came down out of the property?

A. Yes.

Q. Did you both leave up there at the same time?

A. No.

Q. Who left first?

A. I don't know when he left.

Q. He wasn't with you, then, the entire day?

A. Oh, no. He showed me the corner, and what he did after that I don't know. [77]

* * *

Q. Then, when you got to The Dalles that evening, was Stegmann there when you got up there?

A. Yes.

Q. When had you made the arrangement to meet him, if any? [79]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. The last time I saw him at Lost Lake.

Q. Did you tell him that you would be up there that evening?

A. I told him I would be up there to tell him one way or the other whether I would take it or would not take it.

Q. Did you discuss the timber with anybody else from the time you last saw Stegmann up at the property at Lost Lake, to the time you went up to see him at The Dalles?

A. I don't remember of discussing it with anyone else, but I possibly could have.

Q. You discussed it with Mrs. Parker, did you not? A. I suppose.

Q. When you say you suppose, did you or didn't you? A. I just don't know.

Q. When you went up to The Dalles, did she know what you were going up for?

A. I would imagine she did.

Q. Did you have any discussion with her in detail as to the amount of timber there was on the property and whether or not you ought to buy it?

A. I don't think so.

Q. Had you at that time learned how much Stegmann wanted for it?

A. Well, he had some figures, but then we hadn't worked out any definite figure on it.

Q. What were his figures? [80]

A. I don't remember.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Had you learned at that time how much he was going to have to pay the Winans under his option?

A. Apparently, at that time I knew that the option was from Winans, and the amount that was to be paid.

Q. You still didn't know who the owner of the property was?

A. In addition to knowing that the Metsker map noted that Winans owned these properties, I apparently also knew that the option was given by Winans.

Q. When did you check that?

A. After I got back to the car. After I got back and picked up my wife.

Q. Where did you check it?

A. I checked it in the back seat of my car.

Q. It was your Metsker map, was it?

A. Yes, I had a Metsker map.

Q. Where did you acquire that?

A. I don't know.

Q. You had had it for some time?

A. Oh, yes. I had several maps; lots of counties in Oregon. In fact, I didn't even remember having it until my wife mentioned it to me that we had a map of that.

Q. Insofar as you were concerned, the first time Winans' name was brought to your attention, was

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

when you got back to your car after you had picked up your wife and got out your [81] Metsker map?

A. I think it was the Sunday before, when I saw the option at my brother's home.

Q. Then, about when was it that you got to The Dalles?

A. I think it was before dark that I got back to The Dalles.

Q. How long were you at The Dalles?

A. I don't know that.

Q. Was Stegmann there when you arrived?

A. Yes.

Q. Did both you and Mrs. Parker go in when you went there? A. Yes.

Q. Do you remember what the address was, or where it was?

A. No. It was at The Dalles, up on the hill somewhere. That is all I remember.

Q. In an apartment house or a house?

A. Gosh, I don't know. It was in a house.

Q. Then after you got in what took place? What did you say and what did he say?

A. Well, I don't know. There was a lot of discussion. Naturally, he wanted a bigger price and I didn't want to pay him that price.

Q. How much did he want?

A. I don't remember that. I remember it was more than what I paid him.

Q. How much more? [82]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I don't remember.

Q. Were there any counter-offers made back and forth?

A. As I remember, he had a price, and I don't remember what that was. And I just had a price figured out, and that was the price that I paid for it. There was no—that was the end of it, finally. I said I would pay that much and that was it.

Q. When did you first learn how much he had to pay for the option?

A. I don't know when I did learn that the first time.

Q. Did you see the option before you reached an agreement as to how much you were to pay him?

A. I believe Stegmann did tell me the description and showed me the deal or told me the deal.

Q. How had you arrived at your \$25,000 figure?

A. I figured the cost of logging and approximately the log average that I would receive, and figured the stumpage value from that, and allowed myself plenty of leeway.

Q. Was that all in the same notes that you made? A. Yes.

Q. Did you figure that out on the way up to The Dalles? A. Yes.

Q. You still can't remember when you first learned what the option price was? [83]

A. No, I don't remember. It was some time previous to August 18, I think.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. After your figuring from your rough cruise the approximate yield that the property would make, you came up with a gross figure of \$25,000 to buy the option?

A. I came up with \$125,000 worth of timber and nothing for the land, but just figured the timber value at \$125,000, as I remember.

Q. From there how did you come to \$25,000?

A. Well, then he tells me what he has got on it, the deal he has worked out on it, as I remember.

Q. The deal?

A. Yes, the deal he has got on it.

Q. You mean with the Winans?

A. As I remember.

Q. I thought you said that you had gone up there and that you knew you were going to pay him \$25,000, no more and no less.

A. When I went to The Dalles, yes.

Q. That \$25,000 was what you were supposed to pay Stegmann for the option? A. Yes.

Q. Had he been discussing a substantially larger figure than \$25,000?

A. It was more than that, but I don't remember how much more.

Q. How long were you at Stegmann's apartment house, or [84] whatever it was, that night?

A. I wouldn't know. I wouldn't remember. Possibly an hour.

Q. I still don't understand how you arrived at

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

the \$25,000 flat figure before you got to The Dalles?

A. I figured the value of the timber at \$125,000, and Stegmann told me how much the deal is, so naturally his figure would be \$25,000.

Q. I understood you to testify a minute ago that you didn't think you learned what the option price was until August 18th.

A. Well, as I remember it, but I wasn't sure about it. I also testified to that. I mean in the sense of seeing it. He told me about it there at that time, as I remember.

Q. Did you have any discussion as to where the better part of the timber was on the tracts?

A. Not that I remember.

Q. When you cruised it, you cruised it as one tract? A. That is right.

Q. Then when you purchased the option from Stegmann you purchased the option on the entire tract? A. That is right.

Q. Was there any discussion as to breaking down values on the 25-acre and the 40-acre tract?

A. No, not with Mr. Stegmann. [85]

* * *

Q. Did you look at any of the plats of the title company when you ordered the report?

A. Well, the lady brought out a file there and showed me where there was a title policy on it at that time in force. If there was a plat attached to that, why, possibly I looked at it. I don't know. [86]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. But the file, you say, showed that there was a title policy on it?

A. As much as I could decipher the file. She told me so in that many words, that there was a title insurance policy on it.

Q. Did she say in what company?

A. No. I rather gathered it was the company there. The reason for that is because she said she would allow—if I ever got a policy on it she would rewrite that policy.

Q. What else was said?

A. I don't remember much other conversation.

Q. Did you order a policy at that time?

A. No, I ordered a report. [87]

* * *

Q. Did you order the original title report before you went up on August 13th to look at the property?

A. I don't know when I ordered that title report. It was just a few days before I picked it up.

Q. The events of that day are not clear enough in your mind that you can state whether or not you went in to the Title and Trust Company's office in Hood River before you went up—

A. I think I probably ordered the title report on August 13. [90]

Q. Did you go in when you came back down?

A. I think I returned to Hood River earlier

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

than was my recollection at the time of the deposition, and it was not too late to go in.

Q. Then is it your testimony that you didn't go in there on Monday, August 13th?

A. I think I probably went in there on Monday, August 13. [91]

* * *

Q. What arrangements were made relative to the second payment under the option?

A. Well, there was none made with Stegmann.

Q. Didn't he make a second payment?

A. Oh, under the option. I am sorry. I thought you meant the final payment under the option.

Q. No, I mean the \$4,000 payment.

A. We are referring to the \$4,000 payment?

Q. Yes.

A. Then he was to make the \$4,000 payment, and I was to take [92] it from there.

Q. Was that decided upon before you asked him to survey out the reserved area?

A. Yes, as I remember, it was.

Q. What reason was there for him to make the second payment?

A. I had a reason for that. I wanted him to complete it up to that point, to the amount of \$5,000 paid.

Q. Why?

A. Before I took over. I thought it was more businesslike.

Q. In what respect did you think it was more businesslike?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Well, it seemed to be the place for me to cut it off, for me to take over and for him to quit.

Q. It would have been just as easy, would it not, to have knocked \$4,000 off the price you paid him for the option?

A. Yes, and it would have been just as easy to forget the whole thing. But I didn't. I wanted to cut it off, and I decided to do it that way, and that is the way it was.

Q. Did you have any particular reason for having Stegmann take care of working out the reserved portion of it?

A. No particular reason other than that he would probably be a little cheaper than anyone else.

Q. Did you reach any agreement that night as to how much he was to be paid?

A. Yes, as I remember, we did.

Q. How much? [93]

A. I don't remember the amount. It seemed like it was three hundred and something. \$350, I believe. [94]

* * *

Q. Did you have any discussion that evening—I am referring to the evening when you were all there at Paul Winans' on the 18th—did you have any discussion relative to this reserved area?

A. Possibly, but I am not sure. I believe Mr. Winans mentioned that the swamp area was the area he wanted reserved.

Q. What was the reason, if any, for extending

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

the time within which to stake out the reserved area?

A. Well, Mr. Winans never could get anything done, I suppose.

Q. Was it your understanding that that was supposed to have [98] been done before the notice of election to purchase was worked out?

A. I don't remember whether I understood it that way or not.

Q. You don't remember when you next had occasion to talk with Stegmann after the 18th?

A. No, I wouldn't remember.

Q. Did you personally see him at any time after the 18th before the deal was finally closed?

A. Yes, I think I saw him after that.

Q. When?

A. I don't know exactly when the next time was.

Q. When was the next time that you can remember?

A. Well, I remember being up there with him one day, with Paul Winans, when he was surveying the reserved area.

Q. Was anybody else up there?

A. Well, as I remember, there was Winans and his brother, maybe, and my son and myself and Mr. Stegmann.

Q. What did you do that day?

A. Oh, cut a little brush, and Stegmann showed

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

me how to run the compass, and I ran the compass a little.

Q. How long were you up there on the property that day?

A. I don't know. I suppose all day.

Q. Was it understood by everybody at that time that you were the owner, or you were the purchaser? [99]

A. That is right.

Q. Do you have any way of placing that date at all?

A. The date was probably August 31, 1951.

Q. Following that day did you ever see or talk to Stegmann again before the deal was closed?

A. I suppose I did. I don't remember.

Q. When is the next time that you remember of——

A. Of seeing Mr. Stegmann?

Q. Or talking with him?

A. Oh, I remember——

Q. That is, either in person or by telephone.

A. Oh, I remember sometime in September I told him about the title trouble one time. I remember that. It was on the phone, it seems like. I don't know whether I saw him that time or not.

Q. Did you have any discussion with him as to the details of working out the description of the reserved area between the time you were up there with him on the day you were surveying, and Ross and Paul Winans were up there, or Paul and his

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

brother, I guess it was—did you have any discussion with Stegmann as to the reserved portion between that time and the time the deal was closed?

A. Possibly so. Not that I remember distinctly.

Q. When did you first learn that there was going to be more than 8.88 acres reserved? [100]

A. I think Stegmann told me.

Q. When? A. I don't know.

Q. Or where?

A. Well, he told me on the phone.

Q. That was before the deal was closed?

A. That is right.

Q. Did he call you up specifically for the purpose of telling you that?

A. I don't remember whether he called me or I called him. I think there was one other discussion at that time, when he was going to deliver that deed. As I remember, I told him that I wasn't going to wait any longer for him. The 10th—that was it—that was as long as I was going to wait. If the deed wasn't there the 10th, why, the deal was off.

Q. What were you going to do about the \$5,000?

A. I hadn't speculated on that. I figured he probably would go ahead with the deal.

Q. Did you consent to having the amount of the reserved area increased from 8 to approximately 10 acres, or whatever it was? A. Yes.

Q. That was at the same time of this same telephone call you mentioned when Winans called you to tell you about it?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. No. I believe this was on August 31, [101] 1951.

Q. When was this \$4,700 refund in the purchase price agreed upon?

A. At that time, as I remember it. That is on August 31, 1951.

Q. That same telephone call?

A. As I remember.

Q. Do you remember what the exact amount was?

A. No, I don't remember the exact amount.

Q. How did you arrive at that figure?

A. As I remember, it was his offer, and I accepted it.

Q. That was to cover the additional approximately two acres, wasn't it?

A. Whatever the additional was. I think it was nearer three than two, maybe.

Q. Then you have now testified that you called Paul Winans sometime before you went up to his place on the night the notice of election to purchase was signed; that you saw Paul Winans there that night of the 18th, and that you also saw him on at least one occasion after that when you, Stegmann, your boy and Paul were up surveying the reserved area; and you have testified to this telephone call regarding the additional reserved acreage. Did you ever see Paul Winans other than on those two occasions?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I could have, but I don't remember of it. I possibly could have again.

Q. To make the question a little bit more specific, instead [102] of just seeing him did you ever meet with him on any other than those two occasions?

A. In person?

Q. Yes.

A. I don't know whether I did or not. I don't believe so. [103]

* * *

Q. Do you remember when she went to Hood River to make the final closing payment?

A. It seems like it was on Saturday. I don't know whether it would be the 9th——

Q. That was September 8th (referring to calendar). A. The 8th? [116]

Mr. Jaureguy: Saturday is the 8th.

Q. (By Mr. Buell): It is your recollection she went up Saturday? A. I believe she did.

Q. Did she stay up there the entire week end or did she come home nights?

A. I think she came home.

Q. Did you go up to Hood River on that Saturday with her?

A. No, I don't think so. If I did, I went right on through.

Q. Did she tell you what had happened or what had developed while she was up there Saturday?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. She might have, the development of it. I suppose she did.

Q. Do you remember at all what she told you, if anything? A. Not in essence, no.

Q. Were there any uncertainties remaining when you saw her after she had been up there Saturday?

A. Uncertainties relative to what?

Q. Relative to the closing of the transaction.

A. No, I don't believe so, that I remember, only that she got advice not to close that evening, as I remember, but to close the next Monday.

Q. Did she say whom she got that advice from?

A. I think it was Mr. Abraham, the District Attorney, as I remember.

Q. Had you suggested that she go to see Mr. Abraham? [117] A. Yes, I did.

Q. Before she went up Saturday? A. Yes.

Q. Did she have a copy of the proposed deed when she came back Saturday?

A. I don't know.

Q. You don't remember seeing one?

A. I don't remember.

Q. When you say you don't remember, do you mean that in that sense?

A. I just don't remember.

Q. Or that she could have or she could not have, either way?

A. Either way it could have been.

Q. Then did either you or she do anything in

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

connection with this closing transaction on Sunday, which would be the 9th of September?

A. Well, it seems like—not anything to do with the closing, but possibly she may have got the money on Sunday to take up on Monday.

Q. Do you know how she got the money?

A. Well, she got it in a check, some kind of a guaranteed check of some kind.

Q. Where did she get it?

A. I suppose where we had money in the bank there at The First National Bank of [118] McMinnville.

Q. Do you have any recollection of either you or she or both of you going to McMinnville on that week end?

A. Well, I think we went—we stayed down there that week end. I do not remember for sure where we stayed.

Q. I see. Had you sent a copy of the proposed description of the reserved tract by Saturday, September 9th? A. I don't remember.

Q. Did Stegmann ever contact you and tell you that he had finally agreed upon the description?

A. No, I don't believe so, but he might have. He might have phoned me.

Q. There again you have no specific recollection one way or the other? A. No, I don't.

Q. Did Mrs. Parker have anything to say about the description of the reserved tract when she got back September 9th?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I don't believe so, that I remember. She might have discussed it some.

Q. Didn't she go to Hood River on that Saturday with the intention of closing the deal that day, if possible?

A. Well, I think so, as I remember, to close the deal.

Q. But you can't remember her giving a reason for not closing it?

A. Well, I suppose the usual reason: They just never got around to anything. [119]

Q. Did she say anything about having seen Stegmann in Hood River that Saturday?

A. No. She didn't tell me she did.

Q. Then Monday did the two of you go from McMinnville to Hood River together?

A. I don't remember. It seems like I took her up to Hood River and went on from there and left her there early, before anything was open. Maybe we were already at Hood River.

Q. Did you tell her what she was supposed to do?

A. No.

Q. Did she tell you what she was going to do before you left her?

A. She was going to see Mr. Abraham.

Q. Anything else?

A. That is all I remember. She might have mentioned she was going to be at a certain place in the evening so I could pick her up, or something

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

of that kind, but I certainly don't remember the place nor the exact time.

Q. Did you pick her up that evening?

A. I believe I did, but I don't remember distinctly.

Q. You don't have any recollection of that at all? A. No, I certainly don't.

Q. Do you recall seeing her that evening at all?

A. Possibly I did at home some time. I don't remember. I just don't recall anything about how she—I am sure she [120] didn't take a bus home. No doubt I picked her up.

Q. But you don't recall her telling you anything that had happened on Monday, the 10th?

A. No, I don't recall Monday, the 10th, that she told me anything. When I picked her up no doubt she said it was finished, all completed.

Q. Is it your recollection that she at one time told you that the deal was completed on September 10th?

A. No. She may have told me the 10th, 11th or 12th, and I wouldn't remember it.

Q. By that do you mean you have no recollection, then, of when the deal was completed?

A. Well, as I understood it, it was recorded on the evening of the 10th or possibly the 11th, the morning of the 11th. I am not sure. The deed speaks for its own date. I don't remember. It seems like it could be closed the 9th or 10th and

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

was recorded the day of the 11th, something like that.

Q. I am not interested—as you say, the deed speaks for itself. But what I am trying to find out, Mr. Parker, is what your recollection is of when you first learned from Mrs. Parker that the deal had been closed and what she told you at that time.

A. Well, after the deed was recorded she told me the deal was completed. Exactly the hour afterwards I don't remember, and what she said at that particular time exactly I don't [121] remember, other than no doubt she told me the deal was completed.

Q. You don't recall there having been a second overnight delay before the actual delivery of the check and the delivery of the deed?

A. Well, there was a delay overnight. I remember that.

Q. You have already mentioned that she had gone to Hood River on Saturday?

A. Well, I could even have been mistaken about that. Maybe it was on the 10th. I don't remember. But, anyway, as I remember it, she was up there two days, but I wasn't there.

Q. Did you ever see any draft of the deed before the deed was actually delivered?

A. No. I never did see any draft of the deed before it was delivered, before it was delivered to me or before my wife finally gave it to me.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Had Mrs. Parker ever met Paul Winans prior to the closing?

A. Not to my knowledge.

Q. How did she know what to do after she got to Hood River when she went up the first time for the purpose of trying to close this transaction?

A. Well, she had sense enough—I told her to go see the attorney.

Q. What attorney?

A. Mr. Abraham, the District Attorney of Hood River County. [122]

Q. How did he get the information necessary as to what had to be done to close the deal?

A. Well, I don't know. I wasn't there. I can't speak for my wife or Mr. Abraham. Mr. Winans had previously told me about Vawter Parker would be his attorney up there, so I no doubt told my wife that.

Q. You are quite sure you had not made any arrangements for Stegmann to meet Mrs. Parker in Hood River on either the 9th or the 10th or the 11th or the 8th?

A. No, I absolutely didn't make any arrangements for my wife to meet Mr. Stegmann there. I had told Mr. Stegmann on the 10th, the night of the 10th, that the deal was due at that time to be completed.

Q. How did she know what was necessary to complete the deal?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Well, I suppose she would know just as much about it as I would.

Q. You said she had never met Paul Winans, to your knowledge?

A. No, she had never met Mr. Paul Winans, to my knowledge.

Q. You had never discussed the deal yourself with Mr. Abraham?

A. I might have a trifle, maybe. I am not sure about that.

Q. Did you ever discuss it with Vawter Parker?

A. No, I never met Mr. Vawter Parker. I wouldn't know him if I saw him.

Q. But without your having to tell Mrs. Parker what she was supposed to do, you sent her up to Hood River to close this [123] \$95,000 transaction with the advice to go in and see Mr. Abraham?

A. Well, I felt that if Mr. Abraham didn't know, I didn't know who she would go to see to close the deal. I wasn't going to give her advice, being a layman, when she could go to an attorney right there. I had no reason to be telling her how to close the deal.

Q. Had you at that time agreed on the amount of this rebate you were to receive?

A. Yes, as I remember, Mr. Winans and I had agreed.

Q. The first time Mrs. Parker went up there was

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

there any uncertainty in your mind as to in whose name you were going to take the property?

A. In her mind?

Q. In your mind.

A. Yes. Yes, there was.

Q. In whose name did you contemplate possibly taking the property in?

A. In maybe the Associated Engineers, her name, or my name, or my son's name.

Q. When did you finally decide to have it in your name, or did you make the decision?

A. Well, I believe my wife made that decision.

Q. Had there been any discussion between you as to upon what basis the decision would be [124] made.

A. Oh, yes. We had discussed its merits both ways. In fact, I discussed it with the attorneys a trifling amount, in relation to my son, in a trust setup, and various things.

Q. Which attorneys? A. Pardon?

Q. Which attorneys?

A. With Lincoln Ferris. At various times I discussed it with him, whether I should set up some timberlands for him in trust. Then I had a trade name, Associated Engineers. I didn't know exactly which way to do it.

Q. You say Mrs. Parker finally made the decision?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Yes, I think I more or less left the decision finally up to her, which way she would do it.

Q. Did Mrs. Parker ever tell you what she had Mr. Abraham do in connection with the closing of the transaction?

A. No, not anything specifically, I don't believe.

Q. Did she ever tell you anything about it?

A. Oh, yes. No doubt she told me something about it.

Q. Can you remember anything that she told you?

A. Well, as I remember it, she told me that she had Mr. Abraham close the deal with her. That is all I remember about it.

Q. Did she specifically tell you anything that she had him do?

A. Not to my recollection, except look the deed over, as I remember, and accept it. [125]

Q. Did she tell you whether or not she met Paul Winans in connection with the closing of it?

A. I understood her to say she didn't.

Q. Did she tell you that she had met Vawter Parker?

A. I believe so. I believe she said she had met him.

Q. Did she have the revenue stamps put on the deed when she went to Hood River?

A. She should have had, yes.

Q. Did you tell her how much to get?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. No, I don't think I did, because I think I purchased them.

Q. Beg pardon?

A. I think I had them. I think I bought them.

Q. How many did you buy?

A. I don't remember.

Q. Or to represent what consideration?

A. I don't remember that. It seems like I had several around home accumulated, too, and then I had to purchase others.

Q. Do you know how many were put on the deed, actually?

A. No, I don't. I remember some mention of a mistake being made as to how much was put on. I remember my wife mentioned that.

Q. Had you ever had occasion to have Mr. Abraham do any work for you before this transaction?

A. Well, I don't know whether it was for me or not, but he was in on a deal—he was the attorney for another person [126] when I had had some dealings up there.

Q. At the time the deed was delivered to Mrs. Parker on September 11th, at that time or at any time before that had anybody ever suggested to you or notified you in any way that the United States claimed some interest in the 40-acre tract?

A. Absolutely not.

Q. You say absolutely not. You include in that

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

statement, do you, any representatives of the United States Forest Service? A. I certainly do.

Q. And Paul Winans or any of Paul Winans' family? A. I include everybody.

Q. At the time you obtained this deed you had no idea whatsoever that there was any cloud on the title or defect in the title or possibility of a defect?

A. I had no idea but what the title was good. I was relying on the Title Insurance Company, and I didn't hear anyone say that the title was anything but good, so therefore I knew nothing about the title being in error, if it was in error, at the time I got the deed. [127]

* * *

Q. Do you recall having a meeting in McMinnville between Bill Dashney, yourself and myself and Mr. Alstadt? A. I remember the meeting.

Q. What is your recollection of what took place at that meeting? A. Nothing.

Q. What was discussed?

A. Well, I don't remember. It seems to me quite a few things. The main thing I was interested in was some money, or the title clear—the title clear is what I wanted. Someone suggested either at that meeting or the previous meeting how they would take care of some arrangements, or how they wanted to proceed. That is about all I remember of it.

Q. Don't you recall at that meeting, Mr. Parker,

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

that you repeated that you had paid the full sum of \$125,000 for this property, less the \$4,700; the exact figure you didn't have, but less that particular amount, whatever it developed to be, for the property?

A. I don't think I quoted any figures. The whole thing was laid on the desk; all the papers were laid on the desk for everyone's inspection there, and they all inspected them.

Q. All of what papers?

A. All of the options and everything, checks and——

Q. There weren't any checks down there, were there? A. Yes, there was. [136]

Q. Shown to myself?

A. Well, they was laid on the desk.

Q. In Mr. Dashney's office?

A. I don't know which office it was. It was in the Marshes' office.

Q. In the suite of offices there?

A. That is right. I don't know which office. They had the check and it was there, as I remember it.

Q. Which check did they have?

A. I don't remember. I don't remember which checks. All the data we had at that time was laid on the desk. I actually didn't engage in that conversation but very little. Most of the conversation was between the attorneys present.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Don't you recall that at that meeting you told Mr. Dashney, Mr. Alstadt and myself that you had had no notice whatsoever prior to your receiving this deed and paying the money that there was any possible defect in the title to the property?

A. I don't remember telling them that.

Q. You don't? A. No.

Q. Don't you recall that at that same meeting, Dashney and you and I and Mr. Alstadt, you told us that your only contact with Paul Winans in the course of this timber transaction was that on one occasion you went up on a survey trip, at which you were introduced as a surveyor from Portland who was going [137] to help run the lines?

A. I absolutely did not make that statement in your presence or any other man's presence.

Q. Didn't you at that particular meeting tell Mr. Alstadt and tell myself that you had arrived at \$125,000 on the basis of the actual timber cruise that you had made, and setting the average stumpage value of \$35,000?

A. On the fir, yes. I had arrived at that figure concerning the fir timber. I remember distinctly of telling you and Mr. Alstadt that.

Q. Didn't you at that same meeting tell Mr. Alstadt and me that in your opinion the sum of \$35,000, less whatever amount had been repaid you by Paul Winans, represented the fair and actual value of the timber on Lot 1?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I don't remember of saying that.

Q. Don't you remember telling us that you would be willing, if you had to do it over again, to go on the market and purchase Lot 1, the 25-acre tract, for \$35,000 less whatever the \$4,700 kick-back was?

A. No, I don't remember that.

Q. When you say you don't remember that, does that mean that you could have and you don't remember it, or you might not have?

A. Well, if I don't remember, I just don't remember.

Q. I want to make sure the record stands clear here on the [138] things that you positively deny, such as the statement about your only connection with Paul Winans, which you absolutely denied?

A. Well, you had quite a question concerning Paul Winans. It involved Mr. Hines and a lot of other people. So when I denied the question I was denying only portions of it.

Q. If there is any ambiguity on that point, my question was whether or not you told Mr. Alstadt and myself in the presence of your attorney, Bill Dashney, that the only contact you had had with Paul Winans during the entire transaction was on one occasion when you went up on the property with Paul Winans and Stegmann and somebody else to run the line of the reserved tract, the reserved 8 or 10 acres.

A. Your question has changed. It was Mr.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Hines on the first question, and I had never met Mr. Hines or any Mr. Hines concerning this property. And I didn't say that that was the only time that I had ever seen Mr. Winans.

Q. I am sorry. We will start in over again. Did you or did you not tell Mr. Alstadt and I in the presence of Mr. Dashney that your only contact with Paul Winans during the entire course of this transaction was one occasion when you went to the property itself while they were in the process of surveying out the reserved tract, and on that occasion you were introduced as a surveyor from Portland and that your interest in the property was not disclosed. Now did you or did you not tell [139] Mr. Alstadt and me that?

A. I sure as hell didn't. [140]

* * *

Q. Going back to the time of the assignment of the option, [156] did you give Mr. Stegmann a check for \$25,000 that night, the night he assigned the option to you?

A. I am sure it was that night. Whenever the check was dated, that is when I gave it to him.

Q. Does Mr. Jaureguy have that check?

A. I think it is there.

Mr. Jaureguy: Here it is. August 14th.

(The check dated August 14th above referred to was marked by the Notary Parker Deposition Exhibit 14.)

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. (By Mr. Buell): When did you receive that check back from Mr. Stegmann?

A. I don't remember.

Q. Could you place it as before or after the time the deed was delivered?

A. I think it was afterwards.

Q. Could you place it before or after the time suit was filed?

A. I received it from him thereabouts the time it was deposited, so you can look on the check and see when it was deposited.

Q. You deposited that to your account in the McMinnville bank? A. Yes.

Q. Just about the time or shortly after the time you got it [157] back from him? A. Yes.

Q. Within a day or so?

A. I would think so; maybe longer.

Q. Did you have any particular reason for not just retaining the check at the time it was made out and the option assigned to you?

A. Mr. Stegmann would want the check.

Q. Did you have to request him to give you the check? A. Yes, I did.

Q. Did he object to giving it to you?

A. Some.

Q. On what ground?

A. Well, that the amount of money wasn't due yet on that \$22,000 deal, and therefore he didn't want to give it back.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. At the time you purchased the option from him you knew that he had that amount of money owing you, did you not?

A. Yes, I was quite aware of it.

Q. And yet you were ready to give him \$25,000 in cash at that time?

A. Certainly; I had no alternative. Just because I purchased the option didn't change the original deal in any way.

Q. Did you have sufficient funds in your account to cover that \$25,000 check during all the time it was outstanding?

A. I think so. [158]

* * *

Q. (By Mr. Buell): The last question was what was the Phillips [159] Construction Company, and you answered that it was a company which you had started to organize. Was it a corporation or was it just an assumed name?

A. Just an assumed name.

Q. How long had you carried an account at The First National Bank of McMinnville under the name of Phillips Construction Company?

A. I don't remember.

Q. When did you first adopt that assumed name?

A. I don't remember. Probably a year previous to August, 1951, possibly.

Q. Did you ever do business under that name?

A. Yes.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Other than maintaining this checking account? A. Yes, slightly.

Q. Did you have any particular system of drawing checks on this Phillips Construction Company account as against drawing checks on your personal accounts?

A. Oh, originally it was set up to have a system, but it more or less didn't work out that way. Whenever I needed some money it seemed like I was always short one or the other place, so I always had to draw on the other one.

Q. I notice that Exhibit 15, which is the two statements of your personal account, shows a withdrawal of \$100,000 on August 9th and a deposit of \$100,000 in the Phillips Construction [160] Company account on the same date. Was there any particular reason for that transfer?

A. I don't know. I don't recollect. My wife took care of all that. I suppose so the other one would have some money.

Q. Was that withdrawal made in contemplation of this Winans timber purchase?

A. Possibly. [161]

* * *

Q. One thing I meant to inquire a little further about. When you were stating what your general business experience had been you stated that you had loaned a considerable amount of money, as I recall it. If I am not correct, why, correct me.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Over [162] what period of time have you been engaged in the business of loaning money?

A. Since I was a small lad.

Q. How many loans of \$20,000 or above have you made other than this one to Mr. Stegmann?

A. To one party?

Q. Yes. A. Possibly three or four.

Q. What was the largest loan you ever made?

A. I think over \$100,000, or thereabouts.

Q. A cash loan? A. Money.

Q. In other words, \$100,000 in cash at one time or on a loan commitment, or what kind of a transaction was that?

A. Well, a man owed me over \$100,000 or thereabouts.

Q. Had you loaned the money to him?

A. Yes. In a sense I did. I sold him logs, and he sawed the logs up and gave me notes for it, the same as cash. He owed me the money.

Q. How was that repaid? Out of the proceeds of the sale of the logs?

A. No, he paid on the notes.

Q. Was that a secured loan A. No.

Q. To whom was that made? [163]

A. Willamina Lumber Company,

Q. Willamina Lumber Company?

A. Willamina Lumber Company, Willamina, Oregon.

Q. Is that a corporation?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I don't know. It might be now. I don't know what it was then.

Q. Did you obtain any security in connection with that loan?

A. No. I answered that once. No, I didn't.

Q. What is the next largest loan that you made?

A. Oh, I think Multnomah Plywood owed me sixty-some-odd thousand dollars, sixty or seventy.

Q. What kind of a transaction was that?

A. Involved a timber sale.

Q. That was the balance of the purchase price of the timber? A. Yes.

Q. Did they give you a note for that?

A. Yes. As I remember, it was a note.

Q. Whom did you deal with for Multnomah Plywood in connection with that transaction?

A. I believe I dealt with Spears.

Q. Can you name any other instances where you have actually loaned cash in an amount of \$20,000 or above to an individual?

A. Cash? You mean currency?

Q. Currency.

A. No, I can't. I possibly could have, but I don't remember. [164] We made numerous amounts of loans. [165]

* * *

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. When did you learn that there had been a a prior loss under the title insurance policy that Mr. Winans held on this property?

A. Well, I think either my attorneys told me that, Marsh & Marsh, or else the Title and Trust told me in and about the time when two of your people came down to see us down there.

Mr. Buell: I have no further questions.

Questions by Mr. Lindsay

Q. Let's start off here, Mr. Parker. You and Mr. Stegmann are of about the same age; is that right?

A. I don't know exactly how old Mr. Stegmann is, but I would gather.

Q. You were born in 1918?

A. November 17th, 1918.

Q. In the year 1936 you were married to Lois Hutchins? A. Yes.

Q. Where did the two of you first live?

A. I believe in an apartment house.

Q. What city?

A. I believe Dallas, Oregon.

Q. In Dallas, Oregon? A. I believe so.

Q. How long did you stay there? [166]

A. Oh, I don't know. Maybe a year.

Q. I will tell you what I am going to do now so you will know, and you don't have to fence with me on any questions. I am going to try to trace from the time of your marriage to the present time

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

the addresses that you lived at and the general occupations you have followed. That is what I am going to try to do.

A. I will be glad to cooperate.

Q. If you can't give an exact date, I am just going to ask you to try to approximate it.

A. I will be glad to cooperate.

Q. You lived in Dallas, Oregon, for about how long? A. I suppose maybe a year.

Q. During that time what is your occupation? This is the first year you are married.

A. Well, I was working—I was trying to think of his name. The Ford Motor Company there at Dallas—eight hours a day. And then in the evenings generally another eight hours I was doing everything, digging post-holes, cutting cordwood, shearing sheep, or mechanics on the side, and everything.

Q. So at that time you were doing some mechanical kind of work?

A. Yes, I was employed there.

Q. All right. You moved from Dallas about a year later to where? [167]

A. I believe Tillamook, Oregon.

Q. That would have been roughly 1937?

A. I would imagine, yes.

Q. How long did you stay in Tillamook?

A. Well, three months, I believe.

Q. In Tillamook are you employed by anybody?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Yes, I was employed by the Ford Motor Company there.

Q. As a mechanic?

A. In the daytime, eight hours a day.

Q. And at night?

A. I was topping trees and doing everything.

Q. All right. From Tillamook you moved to where? A. Astoria, if I remember.

Q. How long were you in Astoria?

A. Until the longshoremen's strike. I remember that. Whenever that started, why, that stopped everything. That is when I stopped.

Q. What were you doing in Astoria?

A. I was working for Andrews Motor Company.

Q. As what? A. As a mechanic.

Q. At nighttime what were you doing, if you had employment?

A. I was working on a percentage. I was working day and night.

Q. When was your son born, when and [168] where? A. 1937 on a ranch.

Q. What is his full name?

A. Myron E. Parker.

Q. Byron? A. M-y-r-o-n.

Q. Is that the only child you and Mrs. Parker have? A. Yes.

Q. From Astoria you went where?

A. I believe I went back to the ranch, I believe, on the ranch that my father left me.

Q. A ranch in or just outside of McMinnville?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. No, nearer Sheridan.

Q. Do you recall the exact address by way of route and box number? A. Route 1.

Q. You were the only son back on the ranch at that time?

A. Well, this particular heirship was mine.

Q. This particular what?

A. Heirship. It is what I heired from my father.

Q. Your father had left a certain part of his property to each of his sons?

A. No, just two of the sons.

Q. Have we reached the year 1940 yet?

A. Oh, no.

Q. This is still in '39? [169]

A. Oh, previous to that. When we were on the ranch there was '37, or so—'38, maybe; something like that.

Q. What did you do on the ranch? I mean where did your income come from to live?

A. I sold trees.

Q. Off the ranch?

A. Yes, and other places.

Q. The ranch itself was about how many acres?

A. I think twenty-some-odd.

Q. You started in the business of buying up tracts and reselling them?

A. No, I was logging.

Q. Oh, you were doing the actual logging yourself? A. Yes.

Q. Hiring men to work for you?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Yes. Yes, I remember distinctly, because I paid them \$15 a month.

Q. And the tracts of timber you would go in and cruise yourself in the first instance, or look them over?

A. No. It was cut on a per-thousand basis. Nobody had any money to pay anything, so we just sawed it out at four-bits a thousand, and get it when you could get it.

Q. How long did you do that?

A. Well, off and on, probably, until 1940, I guess. 1939 or '40. '40 I believe. [170]

Q. By this time you haven't met Walt Stegmann? A. No, no.

Q. Never heard of him? A. No.

Q. All right. Now what do you do?

A. Well, the mill ceased to pay me for my logs, and I had to quit logging. And I and my wife purchased—yes, purchased a lease of an apartment house down at Corvallis, Oregon, as I remember.

Q. Did you move to Corvallis? A. Yes.

Q. In 1940? A. I think so.

Q. What did you do when you were in Corvallis?

A. Well, my wife ran the apartment house and I worked everywhere. I was a high-climber then.

Q. You worked at so much a day or so much a job? A. So much a tree, yes.

Q. Were you also in the contracting business at that time in the sense of building roads or logging timber? A. No.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Just working for yourself on a tree-topping basis? A. Yes.

Q. How long did you stay in Corvallis?

A. I don't know. Probably a year. Yes, I guess so. [171]

Q. Until 1941?

A. Well, in between. It was about the middle of '39 to the middle of '40.

Q. Then where do you go?

A. I came to Portland and I worked for the Vaughn Motor Company, I think it is called—a machine shop over on the East Side.

Q. As a mechanic?

A. Started in as a bench mechanic.

Q. What did you work yourself up to there?

A. As an inspector on the line.

Q. You stayed there until when?

A. I stayed there about a year.

Q. Has the war started yet? Are we to December 7th, 1941? A. The war had just started.

Q. Where did you go from there, in Portland with the Vaughn Motor Company at the start of the war?

A. Well, let's see. I went overseas then to Honolulu.

Q. The Army or Navy?

A. With Morrison-Knudsen Company.

Q. Construction Company? A. Yes.

Q. How long were you in Honolulu?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I think about four months.

Q. You mentioned earlier Midway. [172]

A. Yes. I volunteered for the Construction Battalion from Honolulu.

Q. The Seabees?

A. It is called the Construction Battalion. At that time it wasn't called the Seabees.

Q. You were in Midway, and so forth, until when? When did you come back to the United States?

A. In the fall of 1942, I guess it was.

Q. You were discharged in the fall of '42, then?

A. Yes, in '42. Yes, the fall of '42.

Q. Where did you return to, Mr. Parker?

A. Portland.

Q. What business did you take up on your return?

A. Let's see. I don't know. I think I took a little rest.

Q. When would you say you went back to work again?

A. Well, I think I went to work for the United States Government.

Q. As what?

A. Gee, I don't know what they called it. I worked as a construction engineer for them.

Q. What branch of the U. S. Government?

A. With the Engineers. I was under the Farm Security Administration.

Q. Were you working for the Corps of Engineers, Portland District? [173]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Out of the San Francisco office.

Q. How long did you work for them? That is, for the United States?

A. I think a little over six months, because I remember before my appointment became permanent I had to join certain parties and committees, and I didn't want to do that so I quit.

Q. All right. You are still living in and your home is at Portland; is that right? A. Yes.

Q. All this time what has happened to the farm or the ranch you had outside of Sheridan?

A. Well, as I remember, we had it rented.

Q. You had it rented at that time?

A. For a lot of the time.

Q. Are we at the year 1944 yet?

A. Oh, no, no. Oh, possibly '43, I think.

Q. After your U. S. job what do you do?

A. Of course, in the meantime—all this time I have had a little money I have been loaning out on the side.

Q. When we finish up I will take up the loan business.

A. I am sorry. Well, I had a shop at Willamina, Oregon that I previously mentioned, Associated Engineers.

Q. Which you had filed an assumed business name for? A. Yes. [174]

Q. In Yamhill County?

A. No, I think I filed in Portland.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. In Portland. When had you filed that? In '44? A. '43 or '44.

Q. And you went from Portland back to this machine shop, then? A. Yes.

Q. Living where?

A. Well, I don't remember whether I lived on the ranch because it was close—whether I lived on the ranch or at the property. We had several houses there.

Q. And the operation of that shop was your main occupation? A. Well,—

Q. Your main principal daytime occupation, aside from your other activities, loaning money—I am just talking about on an eight-hour-day basis.

A. I didn't actually work too much in the shop. I hired men there. I think I had four men or so.

Q. Were you engaged in any other business?

A. Oh, yes.

Q. At the same time that you were running this machine shop? A. I was logging, too.

Q. What do you mean, you were logging?

A. I was logging.

Q. You hired a crew to go in and log timber on a contract [175] basis, or were you purchasing the timber and logging it yourself?

A. I purchased the timber and logged it myself.

Q. How long do those two occupations go on? Until '45 or '46?

A. Oh, I would probably think—I would think '46 or '47, somewhere in there.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Now before you make your next move have you met Walter Stegmann by that time?

A. I don't believe so.

Q. What is your next move?

A. I don't remember.

Q. It might have been McMinnville or might have been what?

A. It might have been McMinnville, but I am not sure.

Q. If it had been, where did you move to?

A. On Route 3, McMinnville.

Q. Was that an apartment house?

A. No, it is a little place there.

Q. On the edge of town? A. Yes.

Q. You did move to McMinnville, but you are not quite sure of the time. Perhaps in '47?

A. Well, I am not sure whether I moved in between. I mean somewhere else. I can't remember.

Q. Do you place yourself as living in McMinnville in 1947? [176]

A. No, I think '48, maybe, I moved to McMinnville.

Q. What was your business when you moved to McMinnville?

A. Logging, I would say, principally.

Q. Buying tracts of lumber and doing the logging yourself or contracting to have it done?

A. Well, it wasn't lumber, or concerning anything to do with lumber. It concerned only logging.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

You mentioned lumber, but I had nothing to do with lumber.

Q. It only concerned logging?

A. Both contract logging and logging myself.

Q. You continued to live in McMinnville, and you were engaged principally in this logging, either for yourself or on a contract basis, until when? From '48 until about when?

A. '50, I suppose. Sometime in '50.

Q. Where would you have gone in '50?

A. I moved to Vancouver in '50, in the fall of '50, I believe.

Q. Did you move to Vancouver before or after you made this loan of \$22,000 to Stegmann?

A. It must have been after.

Q. You moved after?

A. I think so. It must have been.

Q. Since this move on the end of 1950 you have lived in Vancouver?

A. Yes. Whenever I moved up there I have used that as my residence. I lived there, yes. Of course, I have taken [177] vacations.

Q. Oh, yes. But that has been what you considered your home? A. Yes.

Q. At the same address all the time?

A. No, no. When I took a vacation then I would come back and rent another house.

Q. You have been renting all this time in Vancouver? A. Yes.

Q. You have never owned there? A. No.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Meanwhile did you sell your place in Mc-Minnville?

A. I sold it, but I don't remember when exactly.

Q. Now, would you place the first time that you have memories of Walter Stegmann after you moved to McMinnville?

A. After Mr. Stegmann moved to McMinnville.

Q. After Mr. Stegmann moved to McMinnville?

A. Yes.

Q. So you place your first contact with him sometime after 1948, the beginning of 1948?

A. Well, the first contacts I remember is either this loading that my brother did or else the loading on the Murphy-Nelson tract. And whether he was living at McMinnville at that time I don't remember.

Q. Are you or any of the members of your family related to [178] Stegmann or to his wife?

A. No relation. There is no relation at all.

Q. Is your wife related to any members of Stegmann's family or his wife's family?

A. To my knowledge, no one that is related to me, myself, my family, or anyone that I know of pertaining to my relations is related to any of Stegmann's people.

Q. Your acquaintance with him, then, did not begin on a social basis? A. No.

Q. Would you have run into him prior to the time of this loading of the cold decks at the Willamina Lumber Company?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Possibly I could have run into him, but I didn't know him; that is, to know him—I might have known who he was, but not to say, "Hello, Mr. Stegmann," or anything like that. I think possibly he may have had some work accomplished in our shop. The only reason I think that is because of his name running through the books concerning some of his equipment. That is purely recollection. I am not sure about it.

Q. That particular deal in your mind seems to come ahead of the loan which you made in connection with this Gopher Valley Arthur property?

A. On the loading, you mean?

Q. Yes.

A. As I remember, yes. I am not sure. [179]

Q. The loan is not your first acquaintance with him, that this man came up to you as a stranger and you loaned him some money?

A. That is right.

Q. So that prior to this loan you did have some knowledge of him? A. Yes.

Q. Or acquaintance with him? A. Yes.

Q. Has your acquaintance or knowledge of Stegmann ever been on a social basis between the two families? A. No.

Q. Has your family and Stegmann's family ever interchanged visits on any social basis?

A. No.

Q. Any relations between you have always been on a business basis? A. Hard business basis.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Or else just the casual friendship that goes with people who are dealing on a business basis?

A. That is, to speak on the street.

Q. Yes, speak friendly-like.

A. That is right.

Q. In the month of June, 1951,—if you will recall, this option comes up in August, 1951—during just a couple of [180] months before that where were you living? A. In Vancouver, I think.

Q. Do you recall the address?

A. 33rd Street, I think.

Q. Were you listed in the phone book?

A. Oh, yes, I am sure. Might not have been listed in the phone book, but I had a phone.

Q. Did you move in June, July or August?

A. No, but then they don't get the numbers listed always.

Q. I appreciate that. Were you living at the same place in June of '51 that you were at the time this option and this assignment were entered into in August of '51? A. Yes, I think so.

Q. Where were you living in August of 1951, at the time this option and assignment were entered into? A. 33rd Street.

Q. What number?

A. I don't remember the number. I had a phone over there. My wife could tell you, but I don't remember.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Mr. Lindsay: Just excuse me. Do you remember, Mrs. Parker?

Mrs. Parker: 106 East 33rd Street.

Q. (By Mr. Lindsay): Is that correct?

A. I think so.

Mr. Lindsay: Do you recall the number in Vancouver?

Mrs. Parker: The phone number? [181]

Mr. Lindsay: Yes.

Mrs. Parker: No, I don't. It wasn't in the book for 1951, I think.

Q. (By Mr. Lindsay): Starting in June of 1950, how many cars did you own?

A. I don't remember. I think at least two.

Q. What were they?

A. A Plymouth and a Mercury, as I remember.

Q. What model Plymouth?

A. '51, I guess.

Q. Two-door or four-door? A. Suburban.

Q. It looks like a station wagon? A. Yes.

Q. What color was it?

A. I don't know. I am color-blind. I wouldn't know.

Q. But it has the appearance of what a person might describe as a station wagon? A. Yes.

Q. And your other car was a Mercury?

A. Yes.

Q. What year was that A. '50 or '51.

Q. Do you recall what color that was?

A. No, I don't recall. [182]

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. What model was it? Two-door or four-door?

A. Four-door, I think.

Q. You had those same cars in July of '51, August of '51 and September of '51?

A. I sold the Plymouth, and I don't know whether——

Q. I am particularly interested in September, 1951. When did you sell the Plymouth?

A. I don't remember.

Q. Was it before or after September 15th?

A. I don't remember. They had the title on it, and the title was transferred. The State would have it, but I don't really remember.

Q. Was it before or after the closing of the deal in this case on September 11th?

A. I don't remember at all.

Q. How could you find out?

A. From the State of Oregon.

Q. Whom did you sell the car to?

A. Some car company in McMinnville. The Plymouth agency, I believe, in McMinnville.

Q. The Plymouth agency in McMinnville?

A. I believe so.

Q. You transferred title to them?

A. That is right. I signed off the title. I don't know whether they sent it in in their name or someone else's. [183]

Q. The last you have driven that car would be the day you signed off the title?

A. Yes, that is correct.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. How would you describe your boy Myron as to height and color and hair color as of September, 1951? A. Height, oh, five foot five, I suppose.

Q. Weight? A. 135 pounds.

Q. Color hair? A. Brown.

Q. Glasses? A. No.

Q. Where is your boy now, Mr. Parker?

A. He is at my home.

Q. Do I understand he is going to school?

A. Not now he isn't.

Q. Is he going to school this fall?

A. Yes, I will send him to school.

Q. Whereabouts will that be?

A. I am not sure where I will send him.

Q. As I understand, he made how many trips up to Lost Lake with you?

A. I think he went every time I went. I don't remember how many trips we made.

Q. Did he meet any of the Winans? [184]

* * *

Q. Let's turn now to your lending activities and consider them, say starting in the year 1949, which is about when you place your first meeting with Stegmann. At that time did you have considerable money loans out?

A. I had some loaned out. I don't know how much exactly.

Q. Well, let's try to bracket it generally. About the time you made your first loan to Stegmann

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

about how much did you have out in the way of loans as to amount and as to number of people?

A. Oh, I suppose five or six people; maybe more; and probably \$100,000. That is strictly a guess.

Q. Now, the money you had out on loans, was that money which [185] you had earned yourself over the previous years since your marriage, or was it some of the money that you had inherited?

A. Well, some of it was, of course, what I had inherited.

Q. But you did manage to add to your inheritance by reason of your earnings and your business activities? A. That is right.

Q. These five or six loans you had out, amounting to about—I am not pinning you down—roughly \$100,000, what kind of loans were they?

A. All kinds: On real property, on equipment, timber, as I remember, and gyppo loggers.

Q. In each instance you were accustomed to taking a note and also some kind of security?

A. Not always. Gyppo loggers didn't have any security anyway, most of them.

Q. If you were loaning money on equipment you were accustomed to take a chattel mortgage on the equipment? A. Yes.

Q. What rate of interest would you charge?

A. Various. Most generally all I could get from them.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. What would that ordinarily be? We are talking about '49.'

A. Well, it hasn't changed any in the years. I suppose anywhere from 4 to 8 per cent.

Q. What would determine if it was 4 rather than 8?

A. Well, if they wouldn't give me 8, why, I had to take 4. [186] You know what I mean. It was bickering over that interest rate.

Q. What was the period of time you ordinarily made loans for?

A. Oh, from 30 days to 20 years. [187]

* * *

Q. Going back to the \$22,000 loan which was made upon the security of this equipment described in what has been referred [194] to here as the so-called mortgage, you knew about the equipment, but you didn't actually see it at the time of the loan? A. I don't remember looking at it.

Q. Did you know that it was up in the Tillamook Burn, for instance?

A. No, no. At the time of the loan I didn't know where it was at.

Q. Were you making the loan upon the strength of the equipment or upon some other factors?

A. Well, both the note and the equipment.

Q. The note would be just as good as the man, so that there is more than just the equipment?

A. Yes.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. It was your thought at that time that Stegmann was a good credit risk?

A. Well, from my investigation, and people have told me he was good, so I calculated that he was all right.

Q. Did you know, for instance, that Otto Heider had—I don't know whether he had a chattel mortgage or some other type of loan on that same equipment prior to the time that you loaned that money on it?

A. I don't remember of knowing it. He could have told me.

Q. Did you learn about it afterwards?

A. I don't remember.

Q. Do you recall inquiring whether or not there were any other [195] loans on that equipment?

A. No; no, I didn't inquire.

Q. Do you ordinarily loan over \$20,000, Mr. Parker, without finding out whether someone else has a piece of security you want to use?

A. Yes, I have loaned money on a chattel mortgage without knowing positively that no one hadn't borrowed any more money on it. No one has ever beat me on it.

Q. I understood from what you told Mr. Buell that there was no understanding or agreement whatsoever between you and Stegmann that any looking around for timber he might do would be for your account?

A. I don't remember telling Mr. Buell that in

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

that many words, but Mr. Stegmann never at any time looked at any timber for me or for my account.

Q. You never had him specifically go out and see if he could scout out a tract of timber which you could purchase? A. Absolutely not. [196]

* * *

Q. You say that when Stegmann saw you on Sunday, August 12th, at Oscar Parker's house in McMinnville, he didn't show you the option he had secured from Paul and Ethel Winans?

A. I think he did show me.

Q. He didn't tell you the substance of it?

A. Not that I remember.

Q. On that date you had no idea what the purchase price of [206] that property was? This is in McMinnville, Sunday, August 12th.

A. I had no idea about the purchase price. That is, concerning Mr. Winans and Stegmann?

Q. That is right.

A. No, I didn't know anything about it.

Q. He didn't produce the option at that time?

A. I think he did. [207]

* * *

Q. So that when you are up looking at the property on Monday, August 13th, with Mr. Stegmann, do you have any idea as to the fact that the property is considered as two tracts, or do you just view it as one piece of property?

A. I viewed it as one property.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Had Stegmann said anything about that it was considered to be two tracts?

A. No, he never indicated to me that it was two tracts. [209]

* * *

Q. So you still thought of it as one tract?

A. Oh, definitely.

Q. You just thought of it as 65.88 acres, then?

A. That is right.

Q. There was no thought in your mind of dividing it up into two tracts? A. Oh, no. [210]

* * *

Q. Is there any reason that you know of why Stegmann held this check for almost five weeks without cashing it?

A. Well, I know of one pretty good reason.

Q. What is that, sir?

A. It is purely hearsay. Well, the sheriff was over to the bank periodically seeing if he had any funds in there or cashed any checks. Apparently there was an attachment out of some kind—I don't understand those things, but apparently that was true, and Mr. Stegmann told me that possibly that was——

Q. Did Stegmann have an account at the bank that could be attached?

A. I wouldn't know whether he had an account there or not.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Did he tell you he had?

A. No, he didn't tell me whether he had or not.

Q. There is no other explanation that you know of why he held this check for that period of time without cashing it? [214]

A. That is the only explanation I know of, just from what he told me.

Q. Did he have any other debts at that time that you know of? A. Oh,—

Q. By "that time" I am referring to the period from August 14th to September 20th.

A. Now am I supposed to quote hearsay, malicious gossip, or am I confined to the facts on this thing?

Q. Do either one, as far as I am concerned.

A. I would rather not repeat the malicious gossip, so therefore I would say no.

Q. You have no knowledge of whether he was indebted to other persons?

A. Only through the gossip that goes on in the neighborhood. And I had heard through the gossip line that yes, he did have other indebtedness.

Q. So at this time he was indebted to you, as I understand it, \$22,000 on your November, 1950, note, another \$1500 on that same note in April of 1951, plus the amounts he had drawn on this \$10,000 account arrangement you had at The First National Bank?

A. Yes, except that \$25,000 credited toward that, of course.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. When was that credit made?

A. Well, I don't know.

Q.. You turned this check over to him, you say, the evening [215] of Monday, August 13th; is that correct? A. Yes.

Q. Nothing was said about the money he owed you at that time?

A. Well, I wouldn't say nothing was mentioned about it. Not that I remember anything specifically.

Q. But none of his notes or accounts to you were then due and owing?

A. I don't think a one of them was. Maybe some interest that should be paid, as I remember. [216]

* * *

Q. But the first time this discussion of title insurance came up between you and Paul Winans was that particular evening? A. Yes.

Q. That is when you asked him to furnish title insurance?

A. I asked him, yes, what he was going to do for the title. He told me——

Q. And it was after that, when he refused to do anything, you decided you had better do it yourself?

A. That is right. I told him I didn't want an abstract on it; I would have to go buy some title insurance, then. He told me it was with the Hood River office, the title insurance.

Q. So then after that you decided to get some title insurance and to go and do it on your own?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. I decided to get a title report first, to see that he owned it or someone owned it that was trying to work the deal. Then I decided, after talking to the attorney, that I could purchase title insurance. Up to then I didn't even know I could purchase title insurance. [221]

* * *

Q. At what point do you learn how much that property is going to cost from Winans? You told me at McMinnville you didn't know anything about the option. Up at the lake, as I recall your answers to Mr. Buell, you still didn't know. You go back to the Apple Blossom Cafe, and then you drive over to the apartment at The Dalles. When do you first find out how much that option is for? [224]

A. How much the option is for? When I read the option.

Q. When you read it that evening?

A. Well, I believe so. As I remember, I did. I think I read it that evening.

Q. That is the first time you found out how much Winans wanted for this property?

A. No, I think I knew before this time.

Q. Yes.

A. How much he is going to charge Mr. Stegmann.

Q. Correct. That figure, however, had not entered into your calculations at all in figuring out what that property was worth?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. None whatsoever. I didn't even know that it was worth \$50,000.

Q. You had arrived at the \$125,000 prior to the time you got to The Dalles apartment?

A. That I could pay that much for it.

Q. That you could pay that much for it?

A. Yes.

Q. Then you saw the figure was \$100,000 in the option? A. I think I saw it then.

Q. So you said, "Well, I will give you \$25,000, Walt"? A. As I remember.

Q. And that is strictly the basis how that was worked out?

A. I think around that idea, yes. [225]

* * *

Q. And the particular notice of election to purchase was not signed by yourself or by Stegmann, on the top line of that particular exhibit; is that right? A. No, it wasn't when I saw it.

Q. What was the reason for not signing it?

A. Well, Mr. Winans wanted Walt to sign it, Mr. Stegmann, previous to my coming there, they told me—this is hearsay—and Walt said he had nothing to do with it any more so he [229] wouldn't be interested in signing it. Then Mr. Winans wanted me to sign it, and I told him I didn't care to sign it; that when we had a reserved area set out and he furnished me the deed, why, I was ready

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

to pay him his money, and that was that. And I refused and didn't sign it, furthermore. [230]

* * *

Q. Was anything said to Mr. Abraham about putting a bill in Congress to have the title to this back 40 cleared up? A. By myself?

Q. No. At the closing on Tuesday, September 11th, in the office of Vawter Parker, at which Vawter Parker and Abraham [239] were present, and Paul Winans was present—that is the time and place—was anything said at that time by Winans to Abraham about putting a bill in Congress to help clear up the title to the back 40?

A. Well, I wasn't there, so I wouldn't be able to——

Q. I know that, but I am asking you did you ever hear anything about it? It was never reported to you by Abraham? A. No, no. [240]

* * *

Q. All right. In the arrangements you made with Stegmann to close this particular deal what was to be his part in it?

A. He was supposed to survey the lines and see that it was put on paper, on the deed.

Q. Was he given any instructions about the grantor in the deed, to whom the deed was to be made?

A. Not that I remember of. He knew that I would be purchasing it. I suppose he knew it. He

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

was there, and I told them I was going to purchase it, and I bought it from him, so I imagine he knew that.

Q. Did you tell him that the deed should be made out in your name?

A. No, I told him—I do remember telling him that I didn't know whose name exactly I was going to make the deed out to.

Q. So you did, in effect, give him instructions not to make the deed out to anybody in particular but just to leave it blank?

A. No, I didn't give him instructions to make the deed out to anybody at all. His instructions were to get that line and the reserved area on a deed, and Mr. Abraham and ourselves would take care of what was on the deed other than that. [248]

Q. Those instructions were given to him, then, after August 13th, when he made the assignment?

A. Well, it would have to be after that. [249]

* * *

Q. I believe that Stegmann told us that on Saturday, the 8th, he met at Vawter Parker's office and tried to work out the [250] wording of the reservation in the deed. Did he tell you about that meeting?

A. No, I don't think so.

Q. He never reported to you about what had occurred in that particular meeting?

A. No, no.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. You had no idea how close the deal was to being completed?

A. I might have although I don't remember.

Q. The 8th of September?

A. Well, I wouldn't know then, either. Yes, that is right; the 8th of September.

Q. You were not in close touch with it then?

A. Oh, no.

Q. Was your wife?

A. I don't think so. In fact, on August 8th I think I was at Gold Beach.

Q. September 8th?

A. I mean September 8th. I think I was a long ways away. I think I was at Gold Beach.

Q. You drove back from Gold Beach to McMinnville?

A. I don't know the dates in there, but, anyway, I was gone. I am pretty sure of that.

Q. How long had you been gone?

A. I don't remember. A day or two.

Q. You were back in time to drive your wife to Hood River on [251] Monday, the 10th?

A. Yes.

Q. Or would she have driven herself?

A. No, I think I drove her up there, as I remember. I am not sure about that. I might have taken one car and she took the other one up. I am not sure.

Q. I believe Stegmann also told us that he met on Monday, October 10th, again in Vawter Parker's

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

office to go over the deed. Did he report to you about that meeting?

A. No, not that I remember.

Q. Did you have any knowledge that he left that office with a draft of the deed and took it over to Mr. Abraham's office?

A. At that time, you mean, did I have knowledge of it?

Q. Yes.

A. No, I didn't have any knowledge of it at that time.

Q. He didn't meet you that particular evening, Monday, September the 10th? A. That night?

Q. Yes.

A. No, he didn't meet me. I don't remember him meeting me at all.

Q. So you didn't actually see Stegmann again subsequent to what period there in September?

A. Well, I don't remember, but around during the time he was fixing up the reserved area I did meet him. [252]

Q. You had no other contact with him?

A. Well, he may have called me, but I don't recollect it.

Q. Do you know when the name was typed into the deed?

A. No, I don't know when it was typed in.

Q. Do you know who did that?

A. No, I don't even know who did.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Do you know if the deed was turned over to the grantee being left in blank?

A. No, but I think my wife mentioned it to me.

Q. You say that the amount to be deducted for the increased reserved area had been decided upon by you and Paul Winans? A. Yes.

Q. Therefore, there would have been no occasion for the two attorneys to sit down that particular morning and work it out between themselves?

A. Well, I never gave Abraham any instructions to work out any deal. My wife took care of Mr. Abraham.

* * *

Q. At any one of those meetings, or at all of them, were you [253] asked any questions in connection with the representations made by Paul Winans, or any of the Winans family, with respect to the title to the back 40 acres?

A. Well, I wouldn't remember.

Q. Did you ever tell any of these persons Mr. Buell has named as being present at any of these meetings that Paul Winans told you he had a good and marketable title to this property which he was selling you? A. I remember saying that, yes.

Q. Did you also say that Paul Winans had never told you anything about the Government making a claim to the back 40 acres?

A. I don't know whether I told him or not.

Q. I am not asking you about that. I am asking you what you told them.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Well, I don't remember of telling them that.

Q. Could you have told them that?

A. I possibly could have.

Q. Did you tell them that Paul Winans never told you anything about a policy of title insurance he had on that property which had been paid off by reason of the Government claiming ownership of the back 40 acres?

A. I don't know that I told them that. I don't remember of telling them that. I probably did.

Q. Didn't they ask you the question, "Well, didn't Paul Winans tell you that he had some title insurance on this property [254] which had been settled because of the Government claim"?

A. Now we are changing this.

Q. No, I am still taking about the conversation between you and representatives of Title and Trust Company, the plaintiff in this case. I am trying to find just what you told them with reference to what Winans did or did not tell you.

A. Well, I don't remember all the conversation.

Q. Did the Title and Trust Company ever ask you to warrant in writing that Paul Winans told you he had a good and marketable title to back 40 acres?

A. Not that I remember.

Q. Did the Title and Trust Company ever ask you to warrant in writing that Paul Winans never told you one thing about the Government claiming ownership of the back 40 acres?

A. Not that I remember.

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

Q. Did they ask you to assure them of that orally rather than putting it in writing?

A. I don't remember them specifically asking me that.

Q. In this draft of the agreement which was prepared by Mr. Buell, which is Exhibit No. 12, one of the "whereas" clauses in here is:

"Whereas, the Parkers have represented to the company and hereby warrant that they had no knowledge of any defect in the title to said Lot 2 prior to their payment of the purchase price [255] therefor."

By putting this "whereas" clause in here, you were supposed to represent that you had no knowledge about it. Did you ever balk at signing that particular representation? A. No.

Q. You were perfectly agreeable at all times to making such a representation?

A. Well, I didn't even read the darned thing, so I can't say.

Q. You never knew that they wanted you to make that particular representation?

A. Not especially. I didn't even read the instrument, so I wouldn't know.

Q. In Exhibit 13, which is a letter to Marsh, Marsh & Dashney from Mr. Buell, a carbon copy of which you said you got, the letter starts out:

"The numerous changes of mind on the part of Mr. and Mrs. Parker relative to their claim

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

of loss under the owner's policy of title insurance,"

and then goes ahead. What were these changes of mind they are referring to?

A. I wouldn't know. I think principally the way they were going to pay me. [256]

* * *

Q. What contact have you had with Stegmann since the delivery of the deed?

A. Well, he came over to see me one day, here, not too long ago. I remember that because it was so recent. He wanted some papers that I had on this deal. That was one time, and that was recent.

Q. Another time you mentioned earlier was when the suit broke and you saw him in McMinnville and told him about it?

A. Yes, I saw him then. [258]

Q. And between that and the time of the deed would be when he paid back the loan and turned over to you this \$25,000 check?

A. Yes, I saw him then. [259]

* * *

Q. In the cross-claim filed in this action, Mr. Parker, it is alleged that you and your wife are persons of great wealth, and are the owners of land, timber, moneys, stocks, bonds, and other worldly goods in excess of a half a million dollars. Is that correct?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Well, they are being very liberal with my dollars, because I think that is more than I probably have.

Q. What is your opinion as to what your net worth is, as of this time?

A. Well, that would be subject to how much I own up in Hood River.

Q. May I ask you to give me just a statement, not taking that into account.

A. Excluding that?

Q. Yes. A. Oh, \$50,000.

Q. How much?

A. At a forced sale, maybe \$75,000. At speculative values, maybe \$200,000.

Q. Excluding that, your total net worth at this time would be fifty or sixty thousand?

A. I would think so; somewhere in there.

Q. That is made up generally how, in terms of real property, cash and other assets? [264]

A. Well, it is just a purely speculative estimate on my part as to how much I am worth.

Mr. Jaureguy: Just a minute. Off the record.

(Discussion off the record.)

Q. (By Mr. Lindsay): Going into your net worth, then, for the moment, Mr. Parker, what would you say it was in the way of current assets, such as bank accounts, stocks and bonds?

A. Well, I have no stocks and bonds. I think I

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

have some small bonds, but I don't know the amounts. As to cash in the bank, I don't know. It probably isn't very much. I have some contracts out, and they are probably not worth a darn.

Q. Do you own some real property?

A. Yes, I own some real property.

Q. Aside from this particular deed you have here?

A. Yes.

Q. Where would that property be?

A. Well, I own some in Washington.

Q. In Clark County?

A. No, Skamania County.

Q. Where?

A. Skamania County.

Q. Would your wife have a more accurate idea of just what your net worth is?

A. Well, I can't speak for her, but then I would think that I would have \$50,000. My first figure that I told you should be [265] fairly accurate.

Q. Reasonably accurate?

A. I would think so. [266]

* * *

Q. (By Mr. Buell): You mentioned you purchased the jeep in 1950. Was that from the Tilbury Motors in McMinnville?

A. Yes.

Q. Did you trade in an older model jeep on the new?

A. It wasn't a new jeep, but I traded in a jeep for another jeep.

Q. A newer one, newer than the one you had?

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

A. Maybe it was newer, but I am not sure. It was a different model. I traded in a jeep, military style, for a jeep pickup, both of them used.

Q. Did you have any trouble reaching an agreement with the motor company as to the trade-in allowance you were to be given on the old [267] jeep?

A. Well, I usually try to get all I can for anything I trade in, and I would imagine that we had lots of argumentation concerning the amount of the trade-in, a lot of bickering.

Q. Didn't they at first refuse altogether to give you the amount that you were asking for it?

A. Possibly they did. They usually did.

Q. Do you remember what you were asking for it?

A. No, I don't remember it.

Q. Do you know anything about whether or not Walter Stegmann went in to the Tilbury-Gilbert Motors and placed an order for a military-type jeep such as the one you wanted to trade in with them prior to the time that you actually made the trade-in?

A. I don't know anything about Walter Stegmann appearing at Tilbury-Gilbert's at any time in my whole life, concerning anything.

Q. Did Stegmann assist you in any manner in completing the trade-in of your old jeep and the purchase of the other style jeep?

A. No one assisted me in any manner whatso-

Exhibit No. 22—(Continued)

(Deposition of Chet L. Parker.)

ever but myself in any trades I made with Tilbury at any time.

Q. Do you remember ever giving Walter Stegmann \$50 to make a down payment on an earnest money receipt for the purchase of a used jeep?

A. I never gave Walter Stegmann any \$50 check to make any down [268] payment on any jeep of any kind. I am not denying that I might have given him a \$50 check, but I am denying that the purpose of the check was to purchase any specific item for himself or myself, either. [269]

* * *

EXHIBIT No. 23

[Exhibit 23 is the deposition of Paul Winans (256 pages). No portion of this deposition is to be printed.]

EXHIBIT No. 25

[Exhibit 25 is the deposition of Lois Parker (145 pages). No portion of this deposition is to be printed.]

EXHIBIT No. 26

Notice of Election to Purchase

Hood River, Oregon.

August 18, 1951.

Paul Winans, Agent,

Ethel Winans, et al.,

This will serve to notify you that I herewith elect to purchase the real property situated in Section 16, Township 1 South, Range 8 East, W.M., as set out and described in that certain option granted to me by yourselves on date of August 11, 1951, in consideration of payment of the total purchase price of \$100,000.00, (One Hundred Thousand Dollars) to be paid to you at the time and dates as specified under the terms of said option.

.....

Acknowledgment of Notice

Walter Stegmann,

RFD, No. 3,

McMinnville, Oregon.

Receipt of your check of even date hereof in the amount of \$4000.00, (Four Thousand Dollars), subject to collection together with notice constituting your election to purchase is hereby acknowledged.

It is further mutually understood and agreed that time period for measuring and staking out 8.88 acres to be retained by the Sellers, is hereby extended date of on or before August 26, 1951.

/s/ PAUL WINANS,

/s/ ETHEL WINANS.

Approved:

/s/ WALTER STEGMANN.

EXHIBIT No. 27

[Exhibit 27 is a carbon copy of a deed labeled "Bargain and Sale Deed." Name of grantee blank; grantor's signature missing. A copy of the executed deed is attached to the amended complaint as Exhibit B.]

EXHIBIT No. 28-A

Agreement and Timber Bill of Sale

This agreement made and dated this 10th day of May, 1951, by and between Mrs. M. H. David, hereinafter known as the Seller and Walter F. Stegmann hereinafter known as the Buyer. The Seller agrees to sell and the Buyer agrees to buy all of the timber standing, lying or being on the Seller's properties in section 10, township 3 south, of range 2 west,

of the Willamette meridian in Yamhill County, Oregon.

The above-named Buyer, his heirs, employees or assigns shall have the right to go upon, over and across said described real property for the purpose of cutting, logging hauling and removing said described logs and timber covered by this agreement. It is further agreed that the Buyer, his heirs, employees or assign shall have the right to use any existing roads or to build any other roadways necessary for the removal of said timber or adjacent timber he may own.

It is further understood that the Buyer shall log said timber in a workmanlike manner, taking every possible precaution to prevent damages to Seller's properties, and the above-named Buyer will obey all federal, local or government laws, rules or regulations as to the cutting of the said timber.

It is further agreed and understood that the Buyer shall have until May 1, 1954, to remove said timber and logs, and at the end of that time all of the timber and logs shall revert to the Seller.

Seller hereby covenants and warrants that she has a good right and full authority to convey timber, logs and other rights hereinabove described, and hereby binds herself, her heirs, administrators, employees and assigns to warrant and ever defend any and all of the timber, logs rights, and privileges provided for in this instrument.

Payment in full is hereby acknowledged upon the signing of this agreement.

Seller:

MRS. M. H. DAVID,

Buyer:

.....

(Copy)

(Copy)

EXHIBIT No. 28-B

Agreement and Timber Bill of Sale

This agreement made and dated this 14th day of May, 1951, by and between Mrs. A. Leo Johnson, hereinafter known as the Seller, and Walter F. Stegmann, hereinafter known as the Buyer. The Seller agrees to sell and the Buyer agrees to buy all of the timber standing 12 inches breast high or over, lying or being on the Seller's properties in section 10, township 3 south, of range 2 west, of the Willamette meridian in Yamhill County, Oregon, save and except a small strip of timber lying adjacent to the properties of Ralph S. Otis, said strip containing approximately 47,000 ft. of fir timber.

The above-named Buyer, his heirs, employees or assigns shall have the right, to go upon, over and across said described real properties for the purpose of cutting, logging, hauling and removing the timber and logs covered by this agreement. It is further agreed that the Buyer, his heirs, employees or assigns are hereby given the right to use any existing

roadways, or to build any other roadways necessary for the removal of said timber, other timber, and also use of deeded roadways beginning at a point from the center line of said roadways at the northwest corner of tract of land owned by C. E. Burk, and on the south line of road conveyed by Ben Heater and Wife to A. Heater by deed, recorded on page 157, volume 32 of the records of deeds for Yamhill County, Oregon, thence northeasterly along canyon underneath R.R. bridge to a point 10 ft. south of the north line of said tract of land conveyed by B. Heater and wife to A. Heater, and thence parallel with said north line of said tract to a point 967 ft. west of the east line of the said tract conveyed by B. Heater and wife to A. Heater, thence south parallel with each line of said tract conveyed by B. Heater and wife to A. Heater to the south of said tract, said roadway to be seven and one-half ft. in width on each side of center line for a distance of 200 ft., and 10 ft. in width on each side of said center line for the remainder of said roadway, also roads are to be left in as good as condition as they were found.

It is further agreed and understood that the Buyer shall log said timber in a workmanlike manner, taking every reasonable precaution to prevent damages to Seller's properties, and the Buyer shall obey all federal, state or local government laws, rules or regulations as to the cutting of and logging timber.

It is further agreed and understood that the Buyer shall have until May 1, 1953, to remove said

timber or logs, and at the end of that time all of the logs or timber standing shall revert to the Seller.

The Buyer agrees to allow no logging equipment or vehicles to go through the orchard at any time while logging the above-described timber.

It is understood and agreed that the actual road as it is now exists, and may be used, may not be entirely within the designated limits of the so-called "Deeded roadway" heretofore described in paragraph 2 hereof, and that the Seller makes no representations that said roads is within said deeded limit.

It is understood that no yew trees are included in this Bill of Sale, and that the purchaser shall use his best efforts to protect the yew trees on the ground to be logged over.

The Purchaser agrees that as soon as he starts logging operations he will execute an agreement in writing for the faithful performance of his part of this agreement, and will deposit a sum of money, not less than \$* for this purpose, said sum to be returned on completion of this contract and the faithful performance of the terms and conditions herein set out.

Seller hereby covenants and warrants that she has a good right and title to sell the timber and logs which are the subject matter of this contract, and she is the sole and exclusive owner of the land to be logged and herein described and said land is not encumbered with any mortgages or other liens, and hereby herself, her heirs, administers, or assigns to

warrant and to defend any and all of the title and logs herein sold, and that she has a right to grant the use of the "right of way" herein described.

This agreement is made upon the mutual promises and agreements to be kept and performed by each of the parties hereto and upon the further consideration of the payment to the Seller of the sum of \$2500.00 the receipt of which is hereby acknowledged of this agreement.

Seller:

MRS. A. LEO JOHNSON,

Purchaser:

WALTER F. STEGMANN.

*[Longhand in margin]: \$200.

EXHIBIT No. 29

Agreement and Timber Bill of Sale

This agreement made and dated this day of May, 1951, by and between Walt Stegmann, hereinafter known as seller, and The McCormick Lumber and Manufacturing Corp., hereinafter known as Buyer. The Seller agrees to sell and the Buyer agrees to buy all of the timber lying, standing and being, 12 inches breast high or over on the following described property:

All of the timber on the Mrs. A. Leo Johnson properties in section 10, township 3 south, range 2 W., W.M., in Yamhill County, Oregon, with the

exception of a small strip of timber lying adjacent to the properties of Ralph S. Otis, containing approximately 47,000 ft. of fir timber. Also excepting approximately six yew wood trees on the aforesaid properties.

Lot 5 of Section 10, township 3 south, range 2 W., W.M., in Yamhill County, Oregon.

All of the timber on the Mrs. M. H. David properties in Section 10, township 3 south, range 2 W., W.M., in Yamhill Co., Oregon, being a part of the original Benjamin Heater Donation Land Claim, lying north and east of the railroad track.

The above-named Buyer, their heirs or employees, shall have the right to go over, upon and across said described real property for the purpose of cutting, logging, hauling and removing the timber and logs covered by this agreement. It is further agreed that the Buyer, their heirs or employees are hereby given the right to use any existing roads, or to build any other roadways necessary for the removal of said timber.

It is further understood and agreed that the Buyer shall log said timber in a workmanlike manner, taking every reasonable precaution to prevent damage to Seller's property, and the Buyer will obey all federal, state or local government laws, rules or regulations as to the cutting or logging of timber.

It is further agreed that the Buyer shall have

until May 1, 1953, to remove said timber or logs, and at the end of that time, all of the logs or timber shall revert to the Seller.

The Buyer agrees to allow no logging equipment or vehicles to go through the orchard at any time while logging the above-described timber.

In the event that the Buyer shall log and remove said timber or logs before the above-mentioned time shall have expired, the Buyer will give the Seller a letter of release of this contract.

Seller hereby covenants and warrants that he has a good right and full authority to convey timber, logs and other rights hereinabove described, and hereby binds himself, his heirs, administrators or assigns to warrant and ever defend any and all of the timber, logs, rights and privileges and rights of way provided for in this instrument.

The Buyer warrants that they personally have inspected the above-described timber and are not relying on any representations made by the Seller as to quality, quantity or the boundary lines of said timber.

Payment in full is hereby acknowledged upon the signing of this agreement, the price paid and received having been \$5,300.00.

Edna Stegmann is the wife of the above-named seller, Walt Stegmann, and said Edna Stegmann is also a seller under this contract and hereby makes herself a party hereto and is bound by all of the terms of the provisions that affect the seller.

The sellers hereby covenant to and with the buyer

that the above-described property is free and clear of all incumbrances.

In Witness Whereof, the buyer has caused these presents to be signed by its duly authorized officer and its corporate seal to be hereto affixed and the sellers hereunto set their hands.

[Seal] McCORMICK LUMBER &
MFG. CORPORATION,

By /s/ [Illegible]
Plant Mgr.

/s/ WALTER STEGMANN.

/s/ EDNA STEGMANN.

Witness:

/s/ L. E. STANHOPE.

State of Oregon,
County of Multnomah—ss.

On this day of May, 1951, personally appeared before me, the undersigned Notary Public, Walt Stegmann and Edna Stegmann, known to me to be the individuals described in and who executed the foregoing agreement and they each acknowledged to me that they had signed the foregoing agreement and that the same is their free act and deed.

EXHIBIT No. 30

Timber Agreement

This timber agreement made and dated this day of June 22, 1951, by and between Lester W. Walker, hereinafter known as Seller, and Walter Stegmann, hereinafter known as Buyer. The Seller agrees to sell and the Buyer agrees to buy all of the timber standing, lying and being on the seller's properties of the west half of the northwest quarter of section 29, township 2 north, range 10 east, W.M., in Hood River County, Oregon.

The above-named Buyer, his heirs, employees or assigns shall have the right to go upon, over and across said described real properties for the purpose of cutting, logging, hauling and removing the timber and logs covered by this agreement. It is further agreed that the Buyer, his heirs, employees, or assigns are hereby given the right to use any existing roads, or to build any other roadways necessary for the removal of said timber.

It is further understood and agreed that the Buyer shall log said timber in a workmanlike manner, taking every reasonable precaution to prevent damage to Seller's properties, and the Buyer shall obey all federal, state or local government laws, rules or regulations as to the cutting of, and logging said timber.

It is further agreed that the Buyer shall have until June 30, 1953, to remove said timber or logs, and at the end of that time, all the timber or logs shall revert to the Seller.

Seller hereby covenant and warrant that he has a good right and full authority to convey timber, logs and other rights hereinabove described, and hereby binds himself, his heirs, administrators or assigns to warrant and ever defend any and all of the timber, logs, rights, privileges and rights provided for in this instrument.

The purchase price is dollars per thousand board feet mill scale, as delivered to the mill.

/s/ LESTER W. WALKER,

/s/ WALTER STEGMANN.

EXHIBIT No. 31

Logging Agreement Murphy-Nelson Tract

This agreement made and entered into this 1st day of September, 1949, by and between O. L. Arthur and Gladys R. Arthur husband and wife and Martin Thomson hereinafter referred to as the parties of the first part, and Walter Stegmann, hereinafter referred to as the party of the second part.

Witnesseth

The parties of the first part agree to sell to the party of the second part all the merchantable timber on the following-described property, to wit:

The northeast quarter of Section 22 and the northwest quarter of the northwest quarter of Section 23, in township 4 south, range 6 west, of

the Willamette Meridian in Yamhill County, Oregon.

The party of the second part agrees to pay to the parties of the first part \$5 per M millscale and to furnish them with an agreement with the purchasers of the logs to withhold \$5 per M for all logs delivered and removed from the above-described property and to turn the accumulated money over to the parties of the first part monthly. He further agrees to salvage all merchantable timber and to find and remove 1,000,000 feet BM or more at \$5 per M and to complete the operation on or before Nov. 1st, 1950, unless it is mutually agreeable to extend the date. He further agrees to furnish the parties of the first part with information as to the amount of timber fell and bucked semi-monthly or oftener as he receives the amounts from his fallers and buckers.

The party of the second part is to have access to the property along the old logging grade over which the original timber was removed under the following conditions.

He is to build the road to his own satisfaction and is to work out a program to get around the log dump at Thomson's Mill without interfering with logging operations there.

He is to maintain present roads over which he works suitable for the purpose for which they were built and used and to leave them in good condition.

He is to prepare the old logging grade to prevent washing out by winter flood water by constructing

proper culverts and grading the banks on lower side of road down to road level at intervals close enough to insure proper drainage.

The party of the second part agrees to post a down payment of \$1,000 as a guarantee of the faithful performance of the conditions outlined herein, which is to constitute the last payment for logs, with the exception that the parties of the first part may use the money or a sufficient part thereof to make good any deficiency on the part of the party of the second part in carrying out the above conditions. In addition to the above the parties of the first part may cancel the contract, with proper settlement for work completed, if he fails to carry on the work or to take advantage of weather and market conditions.

The parties of the first part agree that all payments outlined above are to be made to Martin Thomson to be divided between them as previously agreed.

In witness whereof—the parties have herein subscribed their names and seals the day and year first above written.

/s/ O. L. ARTHUR,

/s/ GLADYS R. ARTHUR,

/s/ MARTIN THOMSON,

Parties of the First Part.

/s/ WALTER STEGMANN,

Party of the Second Part.

[In margin]: O. L. Arthur, Route 2, Sheridan, Wn.

EXHIBIT No. 32

Feb. 23, 1950.

We, Arthur A. Sowle and Roy L. Stafford, hereafter known as parties of the first part, hereby bargain and sell all of our right, title and interest in a certain piece of road running from the County road to and through the Arthur-Thompson property, and particularly pertaining to the agreement between parties of the first part and Walter Stegmann, for the sum of \$776.89 in hand paid, to Chet L. Parker.

/s/ ARTHUR A. SOWLE,

/s/ ROY L. STAFFORD.

Witness:

/s/ EDNA M. SOWLE.

EXHIBIT No. 33

[Exhibit 33 is an abstract copy of a chattel mortgage from Walt Stegmann to Chet and Lois Parker, covering certain logs, county not shown, consideration \$6,000.00, dated 9-10-49 and recorded 12-19-49. There is also an attached pencil communication addressed to "Herb" and signed "Jack" stating it was not shown in another report for the reason it had been satisfied.]

EXHIBIT No. 33-A

[Exhibit 33-A is a photostatic certified copy of the chattel mortgage described in Exhibit 33.]

EXHIBIT No. 34

Contract

This Agreement, made this 23rd day of March, 1950, between Walter Stegmann, hereinafter referred to as Stegmann; Chet Parker, hereinafter referred to as Parker, and Rutherford Logging Company, an Oregon corporation, hereinafter referred to as Logger,

Witnesseth:

Whereas, Stegmann is the owner of a certain logging contract dated September 1, 1949, between himself and O. L. and Gladys R. Arthur and Martin Thompson, concerning certain timber in Yamhill County, Oregon, and is indebted to Chet Parker in the amounts hereinafter more specifically referred to; and

Whereas, it has been agreed between the parties that Logger will act for Stegmann as an independent contractor in completing the said contract, in receiving payment for logs, and in making the payments for the accounts of Stegmann and Parker as herein specified;

Now Therefore, in consideration of the mutual covenants herein contained it is agreed between the parties as follows:

1. Stegmann does hereby engage Logger to go upon and complete the logging and delivery of the felled and bucked timber, logs and trees upon the premises known as the Northeast Quarter of Sec-

tion 22, and the Northwest Quarter of the Northwest Quarter of Section 23, all in Township 4 South, Range 6 W., W.M., in Yamhill County, Oregon, strictly in accordance with the terms and provisions of that certain contract between Stegmann and O. L. Arthur and Gladys R. Arthur, husband and wife, and Martin Thompson, dated September 1, 1949.

2. Logger covenants to go immediately upon the lands above described and log and deliver the timber above referred to subject to the conditions herein specified. The logs shall be sold to a mill or mills of Logger's choice. Logger shall be entitled, as its compensation, to all amounts received over and above those described in Paragraphs 3, 5 and 6 hereof.

3. Upon the sale of any logs removed by Logger from the above-described premises payments will be made by Logger, or Logger will cause payments to be made as follows:

\$5 a thousand to Arthur and Thompson in accordance with the provisions of the contract above referred to.

\$10 a thousand to Chet Parker, computed as follows:

\$4 on account of falling and bucking;

\$2 on account of improvements to road;

\$4 on account of other indebtedness of Stegmann to Parker.

These payments shall continue until the payment described in Paragraph 5 is made.

4. In the event the operations of Logger shall be interfered with or restrained by the owners of the premises, or if it shall become reasonably apparent to Logger because of claims of others to the logs or timber that its continued operations may subject it to liability, then Logger may cease operations and upon giving written notice of the event to Stegmann and Parker be released of all liability hereunder except with respect to logs previously sold, for which payment shall be made as in the preceding paragraph provided. In such event if Stegmann or Parker shall remove or cause the removal of such interference, restraint or other possibility of liability described in the notice, Logger shall thereafter be bound by this contract.

5. At the time of the first payments made to Logger by the mill occurring not sooner than 30 days after Logger has commenced yarding, if the Logger has not ceased operations as provided in Paragraph 4, then the difference, if any, between the payments made to Parker and the balance shown by the attached statement shall be paid by Logger to Parker. Logger will thereupon be completely released from any indebtedness to Parker.

The difference between the amounts so paid to Parker on account of footage payments as provided above or on account of the final lump sum payment described in the preceding paragraph and the sum of \$7,000, if any, shall be paid to Parker at the

time of the payment immediately above described in this paragraph.

6. From and after the time of the final payment to Parker hereinabove described, Logger shall pay to Stegmann not sooner than 60 days from time of payment by the mill or later than 90 days thereafter the sum of \$4 a thousand for all logs sold, which shall be in addition to the \$5 a thousand to be paid to the owners of the timber by the mills to which sold in accordance with the provisions of the contract.

7. Stegmann agrees to be present at the time of logging during the full working day not less than three days a week for the purpose of satisfying the owners of said timber that he is logging in accordance with his contract. On request of Logger, Stegmann will instruct the mills to which the logs are sold to make payments in accordance with his contract with the owners of the timber and will take such other reasonable actions as will be necessary to complete this agreement in accordance with the understanding and desires of the parties. In the event Stegmann shall fail to spend such minimum time upon the premises being logged he shall not be entitled to the \$4 a thousand above provided.

8. Stegmann covenants and agrees with Logger that he has title to the contract above described and the right to go upon the premises and fell and sell the timber thereon free and clear of all liens or encumbrances except a mortgage to Parker. Stegmann and Parker covenant and agree that in the

event Logger shall be restrained, interfered with, or otherwise cease operations as provided in Paragraph 4, they will reimburse Logger for expenses by it incurred up to the time of such stoppage but not in excess of \$4 a thousand net scale for not more than 250,000 feet plus \$300 on account of road work. Logger will not be entitled to reimbursement for moving his equipment. Stegmann covenants and agrees that in event a lien, claim or other encumbrance is asserted or imposed upon or against the logs hereinabove described he will immediately arrange for the release of such lien, claim or encumbrance and will indemnify and hold harmless Logger from and against any loss or damage arising from such event.

9. All moneys herein provided to be paid shall be paid to Chet Parker at McMinnville, Oregon, and to Walter Stegmann at McMinnville, Oregon, and any notice of the exercise of Logger's rights hereunder shall be addressed to said parties at said address.

10. Notwithstanding the covenant of Stegmann to spend certain time upon the premises being logged it is understood that he shall in no wise have any right of supervision or direction of the manner in which the logging operations are conducted. Logger shall at all times continue to be an independent contractor and its employees shall not be considered the employees of Stegmann or Parker.

11. Logger agrees to keep said premises free from all claims or liens of any nature arising from

any matter connected with its operations and will make all payments required by the Federal Social Security Act or the State Unemployment Compensation Act or any other laws applicable with respect to its employees. Logger agrees to use due diligence to prevent loss by trespass, fire, wind or other casualty to the above-described premises and timber, and to log said timber according to good logging practice, dispose of the slash and debris, and otherwise carry on its logging operations in compliance with the laws of the United States of America and the State of Oregon and the regulations of the agencies of the nation and the state relative thereto.

In Witness Whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.

/s/ WALT STEGMANN,

/s/ CHET L. PARKER,

RUTHERFORD LOGGING
COMPANY,

By /s/ O. E. RUTHERFORD,
President.

Statement of Amount Due on Mortgage
From Stegmann to Parker

March 23, 1950.

On original mortgage	\$2,962.62
Falling and bucking	1,116.93
Otto, Harry, Doc Lux and Mr. Paul, Art Sowle and Roy Stafford	776.89
Mr. Thompson, Cat work on road	250.00
O. L. Arthur, stumpage on timber	135.70
W. L. Brown, Cat work	335.00
Withholding tax	73.80
	<hr/>
	\$5,650.94

In the event that there are any additional claims against this said Murphey-Nelson timber, we reserve the right to pay any or all such claims as may become due before this mortgage is paid in full.

/s/ CHET L. PARKER.

This Mortgage, made the 20th day of November, 1950, by Walt Stegmann, Rte. 3, McMinnville, Ore., hereinafter called Mortgagor, to Chet and Lois Parker, hereinafter called Mortgagees.

Witnesseth. That the Mortgagor hereby mortgages to the Mortgagees all that certain personal property situated and described as follows:

1 converted 11x13 Williamette yarder with a 200 H.P. Cummins diesel motor, together with all lines, rigging, tree plates and any other equipment attached thereto and used in yarding logs.

1 Austin Western road grader.

As security for the payment to Chet L. Parker and/or Lois Parker, the said Mortgagees, the sum of Twenty-two thousand dollars, \$22,000.00 with interest at the rate of 4% per annum according to the terms and conditions of that certain promissory note as follows:

It is also agreed that if the mortgagor shall fail to make any payment, as in the said promissory note provided, then the mortgagees may take possession of said property, using all necessary force to do so, and may proceed to sell the same in the manner provided by law, and from the proceeds pay the whole amount in said note specified, together with such reasonable attorney fees as may be allowed by the court and all costs and expenses.

In testimony whereof, I, the mortgagor herein

named, have hereunto set my hand and seal the day and date first above written.

/s/ WALT STEGMANN.

Vancouver, Wn.
Apr. 20, 1951.

I hereby acknowledge that I have of the above date received an additional \$1500.00 loan from Lois Parker, the same to be repaid in not more than 30 days from the above date, with interest at 4%. This sum to be secured also by the above-described equipment.

/s/ WALT STEGMANN.

EXHIBIT No. 35-A

[Exhibit 35-A is the original of the documents included in Exhibit 35.]

Vancouver, Wash.

May 1, 1951

This agreement made by and between Walt Stegmann, mortgagor, and Chet and Lois Parker, mortgagees, for the sum not to exceed \$10,000.00 (ten thousand dollars) to be secured by the following equipment:

2 Carco towing winches
1 dozer blade

It is understood at this time that the mortgagor is not certain as to the exact amount of money he will need, and not wanting to pay interest on unused money, it is agreed that if and when the mortgagor determines the amounts he wishes to borrow, he will notify the mortgagees so the checks will be cleared through the First National Bank of McMinnville, Ore., not to exceed the full sum of Ten Thousand Dollars.

Interest will be at the rate of 6% per annum from the time the check is honored until the money for each check is repaid.

It is further understood and agreed that this equipment has no liens nor encumbrances of any kind and neither will the Mortgagor allow any while this mortgage is in effect.

Both interest and principal shall be due and payable not later than Oct. 1, 1951, and if not so paid, all right, title and interest in the above-described equipment shall become the property of the Mortgagees and the Mortgagor shall give peaceable pos-

session thereof. If it shall be necessary to take legal action to collect any of the said monies, the mortgagor agrees to pay all such costs or charges as shall be incurred.

Signed at Vancouver, Wn., this first day of May, 1951.

/s/ WALT STEGMANN.

3 Checks \$2,850.—In by May 1st

Int. 150.—

\$3,000.—

Credit \$2,300 balance of check to 22,000.—

140.00 Int to 22,000.—

2 checks \$5,000.00

Int. 26.25

EXHIBIT No. 36-A

[Exhibit 36-A is the original of the documents included in Exhibit 36.]

Title and Trust Company, etc.

2111

The First National Bank.

McMinnville, Ore.

May 21, 1951.

Frank Wortman.

Chet;

Enclosed find all three checks drawn by Walter Stegmann.

/s/ A. A. GUNNESS.

I have cancelled these checks.

EXHIBIT No. 40

[Exhibit 40 is a photostatic copy of Exhibit 40-A.]



EXHIBIT No. 44

[Exhibit 44 is the 1951 U. S. Individual Income Tax Return, Form 1040, of Walter F. and Edna Stegmann, Vancouver, Washington. It designates the taxpayer's occupation as "Timber Industry," lists two children as dependents, indicates total income for that year to have been \$3,591.00, and the total tax to have been \$172.62. The third sheet, attached, is as follows:]

Walter F. & Edna Stegmann
1104 East "V" Street
Vancouver, Washington
Income Tax Return for 1951
Schedule C

Sale of Timber		\$31,650.00
Less:		
Cost of Timber Sold	\$12,750.00	
Road Building & Fire Trails for Removal of Timber Sold	11,325.00	
Transportation	3,360.00	
Traveling, Hotels, Meals	624.00	28,059.00
		<hr/>
Net Profit		\$ 3,591.00
		<hr/> <hr/>

Itemized Deductions

Contributions:		
Miscellaneous		\$ 60.00
Interest:		
On Home	\$ 90.00	
On Car	129.33	219.33
		<hr/>
Taxes:		
On Home	\$ 50.00	
Personal Car	10.00	
Gas Tax-Personal Car	50.00	
State Sales Tax	52.00	162.00
		<hr/>

Medical Expenses:

Dr. C. A. Bump, Newburg, Ore.	\$	105.00
Williamette Hospital, Newburg, Ore. ..		275.00
Misc. Prescriptions, Drugs		104.00

Total Medical Expense	\$	484.00
Less 5% Net Income		179.55

304.45

Total Itemized Deductions	\$	745.78
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EXHIBIT No. 45

[Exhibit 45 is a photostatic copy of the 1950 U. S. Individual Income Tax Return, Form 1040, of Walter and Edna Stegmann, McMinnville, Oregon. It lists the total income as \$969.58, and indicates that there is no tax due. There is attached to this Exhibit a typewritten statement, as follows:]

Walter Stegmann

Contract Logging—1950

Gross Receipts	\$	9,170.50
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Expenses:

Salaries & Wages	\$	2,304.30
State Unemployment Tax		750.00
State Ind. Acc. Ins.		1,250.00
Gas, Oil & Grease		1,107.86
Tires & Tubes		232.00
Repairs & Maintenance		1,245.98
Insurance		972.50
Interest		160.56
Property Taxes		49.80
Telephone		127.92
		8,200.92

Net Profit	\$	969.58
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Logging Costs (1949)

Parts and supplies	\$ 5,943.88
Rock	352.00
Road building	4,677.77
Money paid to contractors	18,612.39
Gas	5,003.71
Social Security Taxes and withholding	6,238.85
State Accident	1,142.47
Unemployment insurance	970.35
Insurance on trucks	1,022.33
Equipment rental	4,552.82
Labor	25,261.18
Licenses	65.00
Fine for overload	218.22
P.U.C.'s	90.53
Timber bought for sale	5,415.27
Interest and insurance on equipment	2,625.00
Depreciation on equipment (schedule below)	9,638.40
	<hr/>
	\$91,830.17

Kind of Property	Date Acq.	Cost	Remaining Life	Depre- ciation
1943 HD 14	March, 1949	\$ 8,500.00	3 years	\$ 1,416.00
1944 HD 14	Apr., 1949	7,600.00	3 years	1,183.00
1948 International Truck	1947	2,000.00	1 year	500.00
1948 BU 85 yarder	1948	12,072.00	4 years	2,414.40
1946 White Truck	Jan., 1949	6,000.00	3 years	1,500.00
1943 G.M.C. Truck	Oct., 1948	5,500.00	3 years	1,375.00
1941 Reo	1948	5,000.00	3 years	1,250.00
				<hr/>
				\$ 9,638.40

EXHIBIT No. 48

Exhibit 48 is a photostatic copy of chattel mortgages and real estate mortgages, recorded in Yamhill County, Oregon, together with a letter from the County Clerk of Yamhill County, Oregon, stating that the records to not disclose mortgages are as follows:

Mortgagor	Mortgagee	Date	Amount	Chattel or Real
1. Walter and Edna Stegmann	The First National Bank of McMinnville	7-20-50	\$ 2,000.00	R
2. Walter F. & Edna Stegmann	Chet and Lois Parker	8-29-50	3,500.00	R
3. Walter Stegmann	H. G. Burkhamer	8-18-45		C
4. Walter Stegmann	The First National Bank of Sheridan	12-21-45	6,000.00	C
5. Walter Stegmann	Geo. F. Lund	3-13-47		C
6. Walter Stegmann	Ross Logging Co.	6-22-44	1,458.00	C
7. Walter Stegmann	Otto W. Heider	11-20-47	4,400.00	C
8. Walter Stegmann	The First National Bank of Sheridan	1-19-48	8,500.00	C
9. Walter Stegmann	The First National Bank of Sheridan	7-29-48	7,000.00	C
10. Walter Stegmann	L. A. Courtemanche, a corporation	1-25-49	838.03	C
11. Walter Stegmann	Wm. O. Payne	3-28-49	16,400.00	C
12. Walter Stegmann	Wm. O. Payne	8-17-49	3,400.00	C
13. Walter Stegmann	Otto W. Heider	9-23-49	3,720.00	C
14. Walter Stegmann	L. S. Courtemanche, an Oregon corporation	10-21-49	385.43	C
15. Walter Stegmann	Burton W. Bailey	2-10-50	658.25	C

The 5th, 6th, 7th, 10th, 11th, 12th, 13th and 14th of the above mortgages state that they are purchase money mortgages. Said exhibit also includes two satisfactions of chattel mortgages, each executed by The United States National Bank of Portland, in favor of Walter Stegmann, satisfying chattel mortgages dated, respectively, 4-15-49 and 5-9-49, each recorded in Yamhill County, Oregon.

Schedule of Gains and Losses from Sales or Exchanges of
Property for Calendar Year 1951Name and Address: Chester & Lois Parker, 503 W. 24th St.,
Vancouver, Wash.

(1) Capital Assets

3. Enter here the sum of short-term gains or losses
or difference between short-term gains and
losses shown above\$ 67,195.03
6. Enter here the sum of long-term gains or losses
or difference between long-term gains and
losses shown above 85,750.08
7. Enter 50 per cent of line 6. This is the amount of
long-term gain or loss to be taken into account
in summary below 42,875.04
8. Summary of Capital Gains (use only if gains
exceed losses in lines 3 and 7):
- (a) Net gain for 1951 (either the sum of
gains or difference between gains and
losses in lines 3 and 7) 110,070.07
- (b) Capital loss carry-over, 1946-1950, in-
clusive none
- (c) If line (a) exceeds line (b), enter the
excess here and on line 1, Schedule D,
page 2, Form 1040 110,070.07

Chester and Lois Parker
503 W. 24th Street
Vancouver, Washington

1951

Income:

Interest Income:

Alcorn Loan	\$ 358.04
Walt Stegmann	150.00
Crest Lumber Co.	153.00
Delmar Stutzman	140.00
Agnes Powell	270.54
Richard & Janet Stewart	80.96

Total Interest Income	\$ 1,152.54
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Rental Income:

McMinnville—Yamhill County

Property	\$ 375.00
Kelso, Washington, Property	100.00
Rent of Log Loader	384.00

Total Rental Income	859.00
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Total Income	\$ 2,011.54
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Expenses:

Insurance	\$ 3,256.49
Gas & Oil	770.35
Telephone & Telegraph	434.71
Advertising	128.92
Labor	3,749.05
Repairs & Maintenance of Equip- ment	10,201.92
Legal & Professional Fees	425.00
Commissions on Timber Sales, Cruis- ing, & Contr. Labor	11,205.98
Travel Expense	1,511.64
Property Taxes	750.18
Safety Deposit Box Rental	24.40
Interest Expense	585.83
Oregon Timber Severance Tax	124.54
Payroll Taxes	579.59

Taxes & Licenses	199.75
Depreciation (Per Schedule)	8,223.74

Total Expense	<u>42,172.09</u>
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Loss on Operations	<u>\$(40,160.55)</u>
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Casualty Losses:

Loss of Currency by theft at Olds & King in Portland, Oregon, on 11-14-51	\$ 180.00
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Less: Recovery by Insurance Pro- ceeds	100.00	(80.00)
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Loss by fire on 2-25-51 of Personal effects in dwelling destroyed by fire—Cost of effects	\$19,960.65
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Less: Recovery by Insurance Pro- ceeds	15,800.00	<u>(4,160.65)</u>
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Total Loss	<u>\$ 44,401.20</u>
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Chester and Lois Parker
Loss on Worthlessness of Property
1951

Purchase of 65 acres of Timber Land in Hood River County, Oregon, in 1951	\$120,000.00
Less: Return for 11 acres erroneously included in deal	4,750.00
<hr/>	
Net Cost of 54 Acres Timber Land	\$115,250.00

Loss of Title to 40 Acre Tract on which taxpayers held Purchasers Title Policy. Taxpayers purchased from a private individual and secured Purchasers Title Insurance from the Title and Trust Company of Portland, Oregon. The sellers furnished the taxpayers with a bargain and sale deed. When the taxpayers negotiated a sale of the property with a lumber firm and applied for a Sellers Title Policy from the Title and Trust Company, they were informed that the title to the 40 acre tract was uninsurable because of the fact that the U. S. Government owned the tract. For the purpose of Title Insurance the taxpayers estimated valuation of the two tracts as follows:

- 40 A. tract—72% of Total cost
- 14 A. tract—28% of Total cost

Taxpayers have no hope of acquiring title to the 40 acre tract owned by the Government. However, their loss in this tract is not finally determinable at this time because there is a possibility that the Title and Trust Company may have to refund the purchase price to the taxpayers as a result of their purchasers Title Policy. This is in accordance with Bureau Ruling under date of 2-14-52 bearing Symbols IT:RP:TR:HBFF + 3.

*[Pages 2130 and 2131—See pages 2133A and 2133B.]

Chester and Lois Parker Schedule of Depreciation—1951

2133A

	Date Acquired	Estimated Life	Cost	Prior Depreciation	Current Depreciation	Total Depreciation	Value 12-31-51	
1951 Mercury	12-20-50	4 yrs.	\$ 2,582.73		\$ 645.68	\$ 645.68	\$ 1,937.05	
1950 Ford Pickup	4-24-50	4	1,281.08	213.52	320.27	533.79	747.29	
1949 Jeep Pickup	12- 1-50	4	1,392.71	29.01	319.17	348.18	1,044.53	1
International Tractor, (Used)	12- 1-50	3	1,500.00		13.33	83.33	1,416.67	2
1949 Ford Coupe	10- 8-49	4	1,757.30	549.16	109.83	658.99	1,098.31	3*
1951 Plymouth Suburban	3-17-51	4	2,144.92		402.17	402.17	1,742.75	4
Kelso Property:								
Land	2-26-49		500.00				500.00	5
Building	2-26-49	15	3,500.00	427.78	38.89	466.67	3,033.33	6
2 Refrigerators	6-20-49	7	200.00	42.82	28.57	71.39	128.61	7
Peterbilt Log Truck	5- 7-51	4	6,500.00		1,354.17	1,354.17	5,145.83	
Trombley Trailer	5- 7-51	5	2,000.00		333.33	333.33	1,666.67	
Yamhill County Farm Land:								
Land	7- 8-49		1,000.00				1,000.00	
Chicken House	7- 8-49	15	2,500.00	250.01	166.67	416.68	2,083.32	
Machine Shed	7- 8-49	12	700.00	87.53	29.20	116.73	583.27	
Dwelling	7- 8-49	15	1,500.00		100.00	100.00	1,400.00	
Rental Apartment	7- 8-49	10	500.00	75.00	50.00	125.00	375.00	
Furnishings	7- 8-49	5	300.00	90.00	60.00	150.00	150.00	
Black Topping Driveway	6- 8-50	5	380.00	44.31	76.00	120.31	259.69	
Desk & Chair	2-18-50	10	318.50	28.39	81.85	60.24	258.26	
D-8 Cat	5-26-50	5	13,000.00	1,516.62	2,600.00	4,116.62	8,883.38	
Portable Loader	3- 9-50	5	1,715.75	225.95	343.15	569.10	1,146.65	
Gas & Oil Pump	8-16-50	5	185.98	18.59	37.19	55.78	130.20	
Sawmill	2-23-51	5	500.00		75.00	75.00	425.00	8
1942 GMC 6x6 Truck	2-23-51	3	800.00		222.23	223.23	577.77	
D-6 Caterpillar	2-23-51	4	3,650.00		760.42	760.42	2,889.58	
Crane	2-23-51	2	50.00		21.00	21.00	29.00	
Grain Drill	10-11-51	10	625.00		15.62	15.62	609.38	
Hood River Log Dump Site	4-25-51	8	1,500.00				1,500.00	9
			<u>\$52,583.97</u>	<u>\$ 3,598.69</u>	<u>\$ 8,223.74</u>	<u>\$11,822.43</u>	<u>\$40,761.54</u>	

- | | | | |
|-----------|-----------|---------|----------|
| 1. Sold | 11-17-51. | 5. Sold | 2-26-51. |
| 2. Sold | 2-24-51. | 6. Sold | 2-26-51. |
| 3. Traded | 3-17-51. | 7. Sold | 2-26-51. |
| 4. Sold | 12-15-51. | 8. Sold | 2-26-51. |

	Date Acquired	Date Sold	Cost of Property	Depletion or Depreciation Allowed or Allowable	Adjusted Cost	Sale Price	Gain or (Loss) Long Term	Short Term
International Tractor	12- 1-50	2-24-51	\$ 1,500.00	\$ 83.33	\$ 1,416.67	\$ 2,000.00	\$	\$ 583.33
1949 Jeep Pickup	12- 1-50	11-17-51	1,392.71	348.18	1,044.53	800.00	(244.53)	
Cottrell Timber Land:								
11—40-Acre Tracts	2-23-51	4- 9-51	49,500.00		49,500.00	77,500.00		28,000.00
1—40-Acre Tract	2-23-51	3-15-51	4,500.00		4,500.00	40,349.45		35,849.45
Bear Creek Timber Land:								
360 A. in Sec. 18 & 20	12-19-46	9-27-51	30,565.00	9,841.93	20,723.07	68,273.73	47,550.66	
Rist Timber Tract	4-19-51	4-25-51	3,000.00		3,000.00	6,000.00		3,000.00
Rex Hill Timber Tract	4-14-51	4-24-51	900.00		900.00	2,250.00		1,350.00
Kelley Timber Tract (Dolph)	7-19-50	8-31-51	800.00		800.00	4,000.00	3,200.00	
Plymouth Suburban	3-17-51	12-15-51	2,144.92	402.17	1,742.75	1,750.00	7.25	
Clackamas River House:								
Property (Dwelling)	2-15-51	9- 5-51	40,684.50		40,684.50	48,676.90	7,992.40	
*Kelso, Wash., Property	2-26-49	5- 7-51	4,200.00	538.06	3,661.94	8,500.00	4,838.06	
Sawmill	2-23-51	11-19-51	500.00	75.00	425.00	3,500.00	3,075.00	
Hood River Log Dump Site	4-25-51	11-24-51	1,500.00		1,500.00	1,500.00		
Yamhill County Property	7- 8-49	11- 2-51	6,880.00	1,028.72				
Commission on Sale				(600.00)	6,451.28	12,000.00	5,548.72	
D-8 Caterpillar	5-26-50	12-15-51	13,000.00	4,116.62	8,883.38	14,000.00	5,116.62	
Principal Payments on 1950 Sale bearing a 91.22% Profit (Payment \$95.00)			834.10		834.10	9,500.00	8,665.90	
			<u>\$161,901.23</u>	<u>\$15,834.01</u>	<u>\$146,067.22</u>	<u>\$300,600.08</u>	<u>\$85,750.08</u>	<u>\$68,782.78</u>
Interest in Parker Estate 12-1-51								
By request								
By purchase			\$ 4,587.75					
			<u>3,000.00</u>	<u>\$</u>	<u>\$ 7,587.75</u>	<u>\$ 6,000.00</u>		<u>\$(1,587.75)</u>
								<u>\$67,195.03</u>

*Traded for a Peterbilt Truck and Trombley Trailer having a fair market value of \$8,500.00.—As this is not a trade of Like for Like, Gain or Loss on the exchange is recognized.

Portion of Loss not determinable in 1951—72% \$ 82,980.00

\$ 32,270.00

Remaining Cost—Loss occurred in 1951 as this property has lost its value with the exception of \$10.00 per acre because of its inaccessibility. 14 A. tract cannot be reached without the ownership of the 40 A. tract. Accessibility to the 14 A. tract was permanently lost with the loss of title to the 40 A. tract. The property has a nuisance value of \$10.00 per acre 140.00

1951 Allowable loss \$ 32,130.00

Attorney Fees Paid in 1951 1,000.00

Total Loss **\$ 33,130.00**

EXHIBIT No. 50

[Exhibit 50 is the 1950 U. S. Individual Income Tax Return, Form 1040, of Chester and Lois Parker, Clackamas, Oregon. It states the total income to have been \$14,653.67, the total tax \$2,085.90. Schedule C (without detail) states that there was a net loss from business or profession of \$20,474.26, and a net gain from sale or exchange of capital assets in the amount of \$35,127.93. The following four sheets are attached]:

Chester & Lois Parker
Clackamas, Oregon

Personal Income Tax Returns for the 1950 Year
Statement of Income and Expense

Income:

Logs Sold	\$24,229.68
Cost of Sales	12,627.56
	<hr/>
	\$11,602.12

Operating Expense:

Independent Contractors	\$ 5,776.59
Cruising timber	2,180.19
Labor—net	1,294.46
Parts and supplies	7,945.85
Advertising	83.90
Legal and accounting	1,077.75
Gas & Oil	1,943.55
Insurance	1,654.27
Taxes, licenses and withheld taxes paid	1,291.56
Bad debt	49.00
Telephone	336.16
Equipment rental	3,000.00
Travel expense	98.05
Miscellaneous	442.40
Depreciation	5,092.76

32,266.49

(20,664.37)

Other Income and (Expense):

Sale of equipment, not capital assets	2,450.00
Insurance recoveries	300.03
Equipment rent	80.00
Interest received	453.28
Property rentals	589.96
Rental property expense	(28.77)
Damages assessed—clearing contract	(1,992.55)
Cost of equipment sold, not capital asset	(1,500.00)
Interest expense	(161.84)

190.11

Net Loss \$(20,474.26)

Chester & Lois Parker

Clackamas, Oregon

Computation of Cost of Logs Sold Out of
Section 7 in 1950

Cost, 1/13/48	\$ 4,185.25
Used in prior years	4,185.25
Remaining cost	-----
Board feet logged in 1950	112,000
Fair market value @ \$6.00 per M for Hemlock, 5M feet	\$ 30.00
Balance fir, at \$19.50 per M, which was the price paid by the Willamina Lumber Co. for a com- parable tract on Nov. 9, 1949; 107,000 ft.	2,086.50
*Total fair market value chargeable to Operations ..	\$ 2,116.50
Cost	-----
Capital Gain	\$ 2,116.50

*Election under I.R.C., Section 117 (k) (1).

Schedule of Depreciation—1950 Year

	Date Acquired	Estimated Life	Cost	Depreciation Reserve 1/1/50	1950 Depreciation	Disposed Of
Yarder	2- 1-46	5 yrs.	\$ 3,500.00	\$ 3,500.00	\$	10- 3-50
Berger Loader	1-20-47	5	4,460.00	2,676.00	669.00	10- 3-50
1948 Ford Pickup	4-10-48	4	1,463.12	640.12	121.92	4-24-50
1949 Mercury	1-31-49	4	2,784.00	696.00	232.00	4- 1-50
1950 Mercury	4- 1-50	4	2,303.66		431.93	12-20-50
1951 Mercury	12-20-50	4	2,582.73			
1950 Ford Pickup	4-24-50	4	1,281.08		213.52	
1949 Jeep Pickup	12- 1-50	4	1,392.71		29.01	
1948 Jeep	3-12-48	4	1,500.00	500.00	343.75	12- 1-50
Attachments	12-30-48	4	550.00	137.50	126.04	12- 1-50
1949 Ford	10- 8-49	4	1,757.30	109.83	439.33	
Kelso Property—Land	2-26-49		500.00			
Building	2-26-49	15	3,500.00	194.45	233.33	
2 Refrigerators	6-20-49	7	200.00	14.25	28.57	
Farm—Land	7- 8-49		1,000.00			
Chicken House	7- 8-49	15	2,500.00	83.34	166.67	
Machine Shed	7- 8-49	12	700.00	29.20	58.33	
Dwelling (Personal)	7- 8-49		1,500.00			
Rental Apartment	7- 8-49	10	500.00	25.00	50.00	
Furnishings	7- 8-49	5	300.00	30.00	60.00	
Black-topping Driveway	6- 8-50	5	380.00		44.31	
Desk & Chair	3-18-50	10	318.50		23.89	
D-8 Cat	5-26-50	5	13,000.00		1,516.62	
Portable Loader	3- 9-50	5	1,715.75		285.95	
Gas & Oil pump	8-16-50	5	185.98		18.59	
			<u>\$49,874.83</u>	<u>\$ 8,635.69</u>	<u>\$ 5,092.76</u>	

Chester and Lois Parker—Clackamas, Oregon
Individual Income Tax Return for the 1950 Year
Schedule of Capital Gains

Description	Date Acquired	Cost	Depreciation Allowed or Allowable	Selling Price	Gain
Yarder & Berger Loader	1946-1947	(see below)			\$ 2,919.04
Hellori Insurance recovery	1948	\$21,800.00		\$23,000.00	1,200.00
Square Top timber	1946	9,841.93		47,500.00	37,658.07
Section 7 and Willamina timber	1946			19,762.25	19,762.25
Section 7 logs—schedule attached					2,116.50
Total long term capital gains					\$63,655.86
Dancer house—purchased June, sold July 1, 1950		3,200.00		4,000.00	800.00
Leroy Moore timber—purchased and sold in December, 1950		5,000.00		7,500.00	2,500.00
Total capital gains, long and short term					\$66,955.86
Federal return—one-half of				63,655.86	31,827.93
short term capital gains					3,300.00
Capital gains—Schedule D, Federal return					35,127.93
Detail of Yarder and Berger Loader Sale:					
Sale price, October 3, 1950				12,700.00	
Cost—Yarder			\$3,500.00		
Berger Loader			4,460.00		
			7,960.00		
Less depreciation allowed or allowable:					
Yarder		3,500.00			
Berger Loader		3,345.00			
			6,845.00		
				1,115.00	
Gain on Sale				\$11,585.00	
Percentage of gain to total sales price					91.22%
1950 down payment, \$3,200.00 x 91.22%				\$ 2,919.04	

EXHIBIT No. 51

[Exhibit 51 is the 1949 U. S. Individual Income Tax Return, Form 1040, of Chester and Lois Parker. It shows total income to have been \$3,134.01, the total tax \$168.00. Attached are three typewritten sheets, reading as follows:]

Chester and Lois Parker
Route 1—McMinnville, Ore.

1949

Income:

Logging Operation:

Gross receipts for logging charges—

Willamina Lumber Co. \$32,750.16

Sale of Logs—John Voll 10,000.00

Total Sales of Logs \$42,750.16

Cost of Timber Cut:

Cost of Timber covering sale of Logs to John Voll 6,060.37

Gross Margin on Sales \$36,689.79

Expenses:

Cruising Expense \$ 1,000.00

Payroll Taxes 603.18

Legal and Professional fees 864.85

Rental of Equipment 6,005.00

Payments on Gypo Contractors 11,538.35

Parts and supplies 7,411.58

Telephone 264.13

Insurance 3,612.59

Interest 123.46

Gas and Diesel Oil	1,177.10	
Advertising	117.08	
Labor	6,014.95	
Road Maintenance and Expense	12,018.56	
Travel Expense in Conduct of Business:		
Trip to Phillipine Islands	\$ 1,774.27	
Trip to Honolulu	400.67	
Meals away from Home—Chet Parker	725.60	
Mrs. Parker	185.80	
Repair Parts for Helleri	100.00	
Depreciation	3,103.42	
Property Taxes	122.50	
Total Expenses	57,162.59	
Net Operating Margin (Loss)	<u>\$(20,472.80)</u>	
Other Income:		
Insurance Proceeds—Talbot and Carroll	\$ 937.50	
Interest Income	1,388.63	
Rental Income	353.19	
Rental Lowboy	865.45	
Net Gain on Operations (Loss)	<u>\$(16,928.03)</u>	

Chester and Lois Parker
Route 1—McMinnville, Oregon

1949

Sale of Hellori 2-29-49 :

Received contract of sale for	\$ 21,000.00
Kelso Apartment House	\$ 4,000.00
Less: Mortgage Assumed	800.00
Total Value of Prop. acquired in exchange for Hellori	<u>\$21,800.00</u>

Cost of Hellori—Per depreciation schedule	\$16,433.33
Binoculars	107.73
Fathometer	1,010.01

Gain on Sale	<u>\$ 4,248.93</u>
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Sale of Stumpage

Sale of Stumpage to Willamina Lumber Co.	\$ 61,510.06
Cost of Stumpage—Carried over from 1948	25,634.90
Gain on Sale of Stumpage	<u>\$ 35,875.16</u>

Summary

Loss on operations	\$ (16,928.03)
Gain on Sale of Stumpage	35,875.16
Gain on Exchange of Hellori	4,248.93
	<hr/>
Total income—State return	\$ 23,196.06
Less: Long term capital gain	
Sale of Hellori	\$ 2,124.47
Sale of Stumpage	17,937.58
	<hr/>
Adjusted Gross Income—Federal Return	\$ 3,134.01
	<hr/> <hr/>

Chet and Lois Parker
Schedule of Depreciation—1949

2144

	Date Acquired	Estimated Life	Cost	Prior Deprec.	Current Deprec.	Total Deprec.	Value 12-31-49	Disposed Of
Tractor	2- 1-46	5 yrs.	\$ 3,500.00	\$ 3,500.00	\$	\$ 3,500.00	\$	
Tractor loader	1-20-47	5	4,460.00	1,784.00	892.00	2,676.00	1,784.00	
48 Ford Pickup	4-10-48	4	1,463.12	274.34	365.78	640.12	823.00	
49 Jeep	8-12-48	4	1,500.00	125.00	375.00	500.00	1,000.00	
Attachments	12-30-48	4	550.00		137.50	137.50	412.50	
49 Mercury	1-31-49	4	2,784.00		696.00	696.00	2,088.00	
49 Ford	10- 8-49	4	1,757.30		109.83	109.83	1,647.47	
Also Prop.—Land	2-26-49		500.00				500.00	
(ved) Prop.	2-26-49	15	3,500.00		194.45	194.45	3,305.55	
Refrigerators	6-20-49	7	200.00		14.25	14.25	185.75	
Arm—Land	7- 8-49		1,000.00				1,000.00	
Chicken House	7- 8-49	15	2,500.00		83.34	83.34	2,416.66	
Machine Shed	7- 8-49	12	700.00		29.20	29.20	670.80	
Well	7- 8-48		1,500.00				1,500.00	
Rental Apartment	7- 8-49	10	500.00		25.00	25.00	475.00	
Furnishings	7- 8-49	5	300.00		30.00	30.00	270.00	
Fishing Boat	7- 8-49	20	17,000.00	425.00	141.67	566.67	16,433.33	2-26-49
Binoculars	11-24-48	20	109.09	.45	.91	1.36	107.73	2-26-49
Barometer	12-20-48	20	1,018.50		8.49	8.49	1,010.01	2-26-49
			<u>\$44,842.01</u>	<u>\$ 6,108.79</u>	<u>\$ 3,103.42</u>	<u>\$ 9,121.21</u>	<u>\$35,629.80</u>	

EXHIBIT No. 52

[Exhibit 52 is the 1948 U. S. Individual Income Tax Return, Form 1040, of Chester and Lois Parker. The first page shows a net loss of \$32,-865.75. Attached to the printed form are four type-written sheets, reading as follows]:

Chester and Lois Parker
Sheridan, Oregon

1948

Income:

Sales of Logs—Oregon Pulp and Paper (cutting)	\$22,638.05
*Willamina Lumber Co.	7,164.89
*Associated Plywood Mills	9,356.75
*Beaver Mill Company	2,813.60
*Glenn Brisbane	1,372.00
	<hr/>
	\$ 43,345.29
Sales of Cold Deck to Willamina Lumber Co. 1,287,500 ft.	28,325.00
	<hr/>
Total Gross Sales of Logs	\$ 71,670.29

Expenses:

Logging Contractors	\$39,145.06
Labor	26,997.80
Telephone	131.66
Licenses & Taxes	38.60
Advertising	116.78
Insurance	1,078.46
Interest	387.36
Payroll Taxes and Industrial Insurance	6,003.22
Cost of Logs sold to Willamina Lbr. Co. (Cold Deck)	6,261.21

*Cost of Logs Sold	4,185.25	
Legal and Professional Fees	265.25	
Gas, Oil and Diesel Oil	1,740.35	
Material Supplies	14,760.17	
Repairs to Boat	8,914.94	
Depreciation	4,139.73	
		<hr/>
Total Expenses	114,165.84	
		<hr/>
Net Loss from Operations		\$ (42,495.55)
Nonoperating Income:		
Sales of Capital Assets—Short Term Gain	\$ 4,462.97	
Long Term Gain		\$1,883.86
Long Term Loss	1,233.65	
		<hr/>
Total Gain on Sale of Capital Assets (Schedule 3)	\$ 5,696.62	
Gain on Sale of Property (Schedule 2)	9,100.00	
		<hr/>
Final Net Loss—State Return		\$ (27,698.93)
50% of Long Term Capital Gain		5,166.82
		<hr/>
Final Net Loss—Federal Return		\$ (32,865.75)
		<hr/> <hr/>

Chester and Lois Parker
Analysis of Cost of Logs—1948

Timber Purchases:	Timber Cruise	Cost
Blanchard Property	2,000,000	
Total Cost of 390 Acres	\$18,000.00	
Allocation of Cost to Land	8,000.00	
Timber Cost @ 5.00 per Thousand		\$10,000.00
Harris Timber	3,000,000	18,000.00
Wanless Timber	1,160,000	3,252.00
Cook Timber	400,000	644.11
Cost of Logs Acquired	6,560,000	\$31,896.11
Total Footage Cut in 1948 1,287,500 ft. which is 19.63% of Total Footage. Therefore cost of Logs sold was		6,261.21
Cost of Carry Forward		\$25,634.90

Sale of Blanchard Farm

Sale of Blanchard Property 6-1-48		\$18,000.00
Cost of Property 12-28-47	\$18,000.00	
Less: Portion Allocable to Timber	10,000.00	
	<hr/>	
Remaining Cost of Property	\$ 8,000.00	
Cost of Sale	900.00	
	<hr/>	
Gain on Sale of Property	\$ 9,100.00	
	<hr/> <hr/>	

Chester and Lois Parker
Schedule of Sales Capital Assets—1948

2150

	Date		Adjusted		Short Term		Long Term	
	Acquired	Date Sold	Cost	Sale Price	Gain	Loss	Gain	Loss
1946 Ford Pickup	10-31-46	9-27-48	\$ 635.62	\$ 1,200.00	\$	\$	\$ 564.38	\$
1947 Ford Truck	6- 2-47	7- 1-48	1,397.19	1,600.00			202.81	
1947 Int. Pickup	3-20-47	4- 1-48	1,075.21	600.00				475.21
Chrysler	10-20-47	7- 1-48	2,975.00	2,800.00				175.00
Motor Patrol Grader	5- 4-48	12- 6-48	2,083.33	3,200.00			1,116.67	
2 D-7 Caterpillar	5- 4-48	7- 1-48	22,910.00	26,000.00	3,090.00			
TD 14 International	4-17-48	6-15-48	9,627.03	11,000.00	1,372.97			
			<u>\$40,703.38</u>	<u>\$46,400.00</u>	<u>\$ 4,462.97</u>	<u>\$</u>	<u>\$ 1,883.86</u>	<u>\$ 650.21</u>

Chester and Lois Parker
Schedule of Depreciation—1948

	Date		Estimated	Cost	Prior	Current	Total	Value	Date
	Acquired	Life	yrs.		Deprec.	Deprec.	Deprec.	12-31-48	Sold
Yarder	2- 1-46		yrs.	\$ 3,500.00	\$ 3,500.00	\$	\$ 3,500.00	\$	
1946 Ford Pickup	10-31-46			1,130.00	282.50	211.88	494.38	635.62	9-27-48
1947 Ford Truck	6- 2-47			1,862.51	232.50	232.82	465.32	1,397.19	7- 1-48
1947 Int. Pickup	3-20-47			1,433.61	268.80	89.60	358.40	1,075.21	4- 1-48
Berger Loader	1-20-47			4,460.00	892.00	892.00	1,784.00	2,676.00	
Chrysler	10-20-42			3,500.00	175.00	350.00	525.00	2,975.00	7- 1-48
1948 Ford Pickup	4-10-48			1,463.12		274.34	274.34	1,188.78	
1948 Jeep	8-12-48			1,500.00		125.00	125.00	1,375.00	
Motor Patrol Grader	5- 4-48			2,500.00		416.67	416.67	2,083.33	12- 6-48
2 D-7 Caterpillar	5- 4-48			23,700.00		790.00	790.00	22,910.00	7- 1-48
TD-14 International	4-17-48			9,959.00		331.97	331.97	9,627.03	6-15-48
Fishing Boat (Used)	7- 2-48	2		17,000.00		425.00	425.00	16,575.00	
Binoculars	11-24-48	2		109.09		.45	.45	108.64	
				<u>\$72,117.33</u>	<u>\$ 5,350.80</u>	<u>\$ 4,139.73</u>	<u>\$ 9,490.53</u>	<u>\$62,626.80</u>	

EXHIBIT No. 53

[Exhibit 53 includes the 1947 U. S. Individual Income Tax Returns, Forms 1040, of Lois Parker and also of Chester Parker. The return of Lois Parker gives her employer's name as "Parker Logging Company, Grande Ronde, Oregon" and her wage or salary from that employer to have been \$3,600.00, being her total income. It states her occupation to have been "Business Manager" and her total tax \$539.00.]

The return of Chester Parker states his occupation to have been "logging," his total income to have been \$28,620.92, and his tax to have been \$10,863.22.

Attached are two typewritten sheets reading as follows]:

Chester Parker
Grand Ronde, Oregon
1947

Income:

Sale of Logs:

Oregon Pulp and Paper Co.	\$79,503.07
Crown Zellerbach	3,435.64
Pacific Plywood	1,518.42

Total Sales of Logs	\$84,457.13
---------------------------	-------------

Expenses of Log Hauling Operations:

Wages	\$22,769.26
Material and Supplies	8,335.38
Insurance	1,364.98
Telephone	176.18
Advertising	13.50
Gas, Oil and Diesel Oil	1,595.52
State Ind. Ins. and Payroll taxes	2,796.67
Contract Fees Paid to Gypo Haulers ..	39,135.19
Taxes on Business Property	576.49
Theft of Abney and Gas pump	100.00
Loss of Worthlessness of Gerald Allen Note	333.00
Depreciation	1,851.12

Total Expenses	79,047.29
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Gain on Logging Operations	\$ 5,409.84
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Refund of moneys advanced to Arroun
Logging Co. and taken as a deduc-
tion in 1946

9,658.58

Interest income

2.50

Gain on sales of capital assets

27,000.00

Adjusted Gross income—State re-
turn

\$42,070.92

Less: 50% of long term capital gain

13,450.00

Adjusted gross income—Federal
return

\$28,620.92

2153

[illegible]

EXHIBIT No. 54

[Exhibit 54 is an "Application for Tentative Carry-Back Adjustment," Form 1045, of Chester and Lois Parker, unsigned and undated, together with a "Claim," Form 843, for refund of tax illegally collected. This claim contains the following statement]:

Form 843

U. S. Treasury Department

Internal Revenue Service

Claim

To Be Filed With the Collector Where Assessment Was Made or Tax Paid.

Collector's Stamp: (Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

- ☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Name of taxpayer or purchaser of stamps: Chester and Lois Parker.

Business address: Grand Ronde, Oregon.

Residence: Sheridan, Oregon.

1. District in which return (if any) was filed: Oregon.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from 1-1-1946, to 12-31-1946.

3. Character of assessment or tax: Income tax.

4. Amount of assessment: \$1,591.94; dates of payment: 1-15-47.

5. Date stamps were purchased from the Government:

6. Amount to be refunded: \$1,591.94.

7. Amount to be abated (not applicable to income, estate, or gift taxes): \$.

The claimant believes that this claim should be allowed for the following reasons:

Taxpayers suffered a net operating loss in 1948 and are therefore entitled to the Carryback Provisions of the Internal Revenue Code. The application of the Carryback to 1946 Income results in a zero tax liability, therefore the entire amount of tax paid for the calendar year 1946 is refundable and now due to the taxpayers detail analysis of the net operating loss carryback and computation of overpayment of tax is set forth in the attached schedule.

Taxpayers hereby request return of tax paid for the calendar year 1946.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed

Dated, 19...

[Attached to these documents is a typewritten sheet, reading as follows]:

1947 Tax Computation

	Tax Per Optional Method Per Original Ret.
Income of Chester Parker—Original return	\$28,620.92
Application of carryback loss—33.82% per 1947 income distribution	16,785.19
	<hr/>
Balance subject to tax	\$11,835.73
	<hr/>
Income of Lois Parker—Original return	\$ 3,600.00
Application of carryback loss 11.18% per 1947—income distribution	2,112.80
	<hr/>
Balance subject to tax	\$ 1,487.20
	<hr/>
Corrected tax liability after application of carryback	\$ 2,788.20
	<hr/>

[There is also a second claim which contains the following typewritten statement]:

Form 843

U. S. Treasury Department

Internal Revenue Service

Claim

To Be Filed With the Collector Where Assessment Was Made or Tax Paid.

Collector's Stamp: (Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

- ☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Name of taxpayer or purchaser of stamps: Chester & Lois Parker.

Business address: Grand Ronde, Oregon.

Residence: Sheridan, Oregon.

1. District in which return (if any) was filed: Oregon.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from 1-1-1947, to 12-31-1947.

3. Character of assessment or tax: Income tax.
4. Amount of assessment: \$11,402.22; dates of payment: 1-15-48.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: \$8,614.02.
7. Amount to be abated (not applicable to income, estate, or gift taxes): \$.....

The claimant believes that this claim should be allowed for the following reasons:

Taxpayers suffered a net operating loss in 1948 and are therefore entitled to the carry-back provisions of the Internal Revenue Code. The application of the carryback to 1947 Income results in a tax liability of \$2,788.20. Therefore the excess of tax paid for 1947 in the amount of \$8,614.02 is refundable and now due to the taxpayers. Detail analysis of the net operating loss carryback and computation of overpayment of tax is set forth in the attached schedule. Taxpayers hereby request return of the overpayment of tax for the calendar year 1947 as set forth above.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed

Dated, 19...

EXHIBIT No. 55

The First National Bank of McMinnville

Frank Wortman, President

Ralph Wortman, Vice President

F. W. Sitton, Cashier

John Wortman, Assistant Cashier

James H. Stanard, Assistant Cashier

McMinnville, Oregon

February 4, 1953.

Nicholas Jaureguy,
1220 Equitable Bldg.,
Portland, Oregon.

Dear Sir:

The following is a list of safety deposit box entries according to our files from July 1, 1950, to December 31, 1950, of Box #118 listed in the name of Lois Parker with deputies listed as Chet Parker and Hattie Hutchens.

July 1—Lois Parker.

July 3—Lois Parker.

July 8—Lois Parker.

July 31—Lois Parker.

August 28—Lois Parker.

September 18—Lois Parker.

October 3—Lois Parker.

October 3—Lois Parker.

December 6—Lois Parker.

December 23—Lois Parker.

It is highly possible that this box was entered by Chet or Lois Parker without their signature being requested by our employees.

Sincerely,

/s/ J. WORTMAN,
Ass't Cashier.

EXHIBIT No. 59

[Exhibit 59 is a certified copy of a Presidential Proclamation dated June 17, 1892, "so far as it relates to the land herein shown." It is the proclamation referred to in paragraph VIII of plaintiff's amended complaint and is relevant only on the question of the title to the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 16.]

EXHIBIT No. 60

[Exhibit 60 is a certified photostatic extract copy of "Oregon School Indemnity Clear List 22, Dallas (The Dalles?)." It proves the allegation in paragraph IX of plaintiff's amended complaint that the State of Oregon selected lieu lands, or indemnity selections, for school lands not obtained, including that in issue here. It is relevant only on the question of title.]

EXHIBIT No. 63-A

Hood River, Oregon.

RFD #2,

November 22, 1943.

Mr. James C. Iler, Forest Supervisor,
Mt. Hood National Forest,
Portland, Oregon.

Dear Mr. Iler:

In reference to your letter of November 6th. It is the purpose of our interests to see that any possible flaw in the title to any portion of my fathers Lost Lake property is cured, and steps are being now taken to that end, whether or not we make any disposition of the land at this time.

As soon as the matter is clarified we will advise you of our conclusions. In the meantime the writer expects to be in Portland in the present week and will contact your office for discussion of any angles of interest pertaining to the above mentioned property.

Yours very truly,

/s/ PAUL WINANS,

[Stamped]: Forest Service—Mt. Hood National
Forest, Portland, Oregon—Received
Nov. 23, 1943.

901 Terminal Sales Building

November 6, 1943.

L

Acquisition—Mt. Hood,
Exchange,
Winans, Paul.

Mr. Paul Winans,
RFD #2,
Hood River, Oregon.

Dear Mr. Winans:

Your letter of November 1 is received.

With regard to the possible flaw in the title to the NE of the NW, it is suspected that such flaw does exist in that the State of Oregon never held title to this tract or at least this is indicated by our records from the General Land Office. However, it would probably require a complete search of all title transfers by an abstractor to determine what if anything could be done to cure the title. It would be useless to try to put through the exchange covering any land for which the title was not clear since it would be rejected when the abstract which you would be required to furnish was reviewed.

In considering Lot 1 separately, a large portion of the timber values would be removed and I doubt if an appraised value of over \$2,800 could be justified. We are still interested in securing the property if you can cure the title so we can deal on the

whole or if you are interetsed in the lesser amount for Lot 1.

Very truly yours,

/s/ JAMES C. ILER,

JAMES C. ILER,

Forest Supervisor.

RFCooke:RH

EXHIBIT No. 63-B

10/23

Ralph

Mr. Winan in today. Said he realized the 40 acres was not clear as to title but that the lot facing the Lake was (Lot 1).

His offer is to exchange Lot 1 for \$8,000.00 and throw in the 40 acres. In addition he wishes to be assured of a summit house site of 5 acres under special use permit on Lake Shore in Lot 1.

Looks impossible to me. Told him we would give him definite answer next week. He also insists upon a quick deal (1 month). If you agree suggest tell him we are not interested.

EXHIBIT No. 63-C

901 Terminal Sales Building
September 24, 1943

L

Acquisition—Mt. Hood,
Exchange,
Winans, Paul.

Mr. Paul Winans,
Route 2,
Hood River, Oregon.

Dear Sir:

Reference is made to your recent conversation with Mr. Cooke of this office.

The evaluation of your property at Lost Lake has been carefully reviewed by our appraisers and in the light of present value it was concluded that a figure of approximately \$7,500.00 could be recommended for this property. The price of \$10,000.00 which you quoted to Mr. Cooke could not be justified. If you are interested in accepting \$7,500.00, please advise us and we will use every effort we can to expedite the exchange.

Very truly yours,

JAMES C. ILER,
Forest Supervisor.

FOSTER STEEL.

By /s/ FOSTER STEELE,
Acting.

RFCooke:RH

EXHIBITS Nos. 63-D, E, F, G, H, I

[Exhibits 63-D to 63-I consist of interoffice communications of the U. S. Forest Service relating to surveys and appraisals of the timber on the disputed property, being dated at various times between August 29, 1951, and January 24, 1944, supporting the statements of value set forth in Exhibit 63-C.]

EXHIBIT No. 64

United States Department of Agriculture
Forest Service

Mt. Hood National Forest

901 Terminal Sales Bldg.,
Portland, Oregon.

January 10, 1944.

Address reply to

Forest Service

And refer to

L

Acquisition—Mt. Hood

Exchange

Winans, Paul

Mr. Paul Winans,

RFD. No. 2,

Hood River, Oregon.

Dear Sir:

Your letter of January 6 and the points brought up in our conversation of the same date have been carefully reviewed.

It will be impossible for us to at this time to accept your land exchange offer for \$8,000 because of the ownership status of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 16, T. 1 S., R. 8E.

We would be glad to continue the negotiations on Lot 1 only, however, as was previously discussed, we cannot justify a value of anywhere near \$8,000.00 for this lot only.

Very truly yours,

/s/ JAMES C. ILER,
Forest Supervisor.

Copy: Mr. Iler, At 2306.

EXHIBIT No. 65

Hood River, Oregon.
RFD. No. 2,
January 13, 1944.

Pacific Abstract Title Company,
408 S. W. Stark St.,
Portland, Oregon.

c/o Hood River Abstract & Investment Company,
Hood River, Oregon.

Gentlemen:

For your information I submit herewith a letter just received from Mr. James C. Iler, Forest Supervisor of the Mt. Hood National Forest whose office

is located in the Terminal Sales Bldg., Portland, Oregon.

The above letter has reference to negotiations for the exchange of Lot 1 and the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, Township 1 S., Range 8 E, Willamette Meridian Situated in Hood River County, Oregon. Under date of December 31, 1943, title insurance in the amount of \$8,000.00 was purchased from the Hood River Abstract Company and Pacific Abstract Title Company covering the above description.

As I understand Mr. Iler's letter some question of ownership of a portion of the insured property appears to have arisen. Under the terms of the insurance policy shown the above title as vested in Ethel Winans, I deem it my duty to notify you herewith of the rejection of our exchange offer on the ground of an apparently claimed or inferred defect in said title.

Yours very truly,

/s/ PAUL WINANS.

Kindly return Mr. Iler's letter to me at your early convenience.

[In margin]: Lewis D. Griffith.

#136—37882

Hood River 1331

EXHIBIT No. 66

United States Department of Agriculture
Forest Service
Mount Hood National Forest

901 Terminal Sales Bldg.,
Portland, Oregon.

January 28, 1944.

Address Reply to
Forest Supervisor
And Refer to

L
Exchange—Mt. Hood
Exchange
Winans, Paul

Mr. Paul Winans,
RFD. No. 2,
Hood River, Oregon.

Dear Sir:

Your letter of December 13 has been received.

Our information regarding the ownership status of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ is based on the general land office records which show that this land is still government property. In other words, they never did issue a patent for this tract to the State of Oregon.

While a formal appraisal of Lot 1 has not been made, a rough valuation shows that a value of not to exceed \$2,000.00 since the greater portion of the

timber on which values are based are on the NE¹/₄ of the NW¹/₄.

We will be glad to hear from you regarding the possibility of an exchange of Lot 1.

Very truly yours,

JAMES C. ILER,

Forest Supervisor.

By: BAXTER REED,
Acting.

(Copy)

EXHIBIT No. 67

Hood River, Oregon.
RFD. No. 2,

February 5, 1944.

U. S. Forest Service,
Mount Hood National Forest,
Mr. James C. Iler, Supervisor,
Portland, Oregon.

Gentlemen:

Your letter of January 28 acknowledging mine dated December 13, 1943, has been received. My above referred to letter which made reference to yours of January 10, 1943, was written and mailed to you on January 13, 1944, and should properly have been so dated. I desire to at this time correct my error in misdating same.

Your information regarding the ownership status of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ is carefully noted and has in turn been referred to the Pacific Abstract Title Company, 408 SW Oak Street, Portland, Oregon, who have issued title insurance covering the above description showing the title vested in Ethel Winans. We maintain that W. R. Winans has by virtue of all available records, plats, abstracts and tax assessments been the openly recognized owner in fact of Lot 1 and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 16, T. 1 S., R. 8 E., Willamette Meridian, for many years and that Ethel Winans as his successor in ownership proposes to enforce and maintain all of her right, title and interest in and to all of the above-described property.

Your suggestion of an exchange based on a valuation of \$2,000.00 on Lot 1 separately has been given due consideration. Inasmuch, however, as it has been our wish when and if we should dispose of the property to sell, excepting a summer homesite reservation, in the entirety, and as furthermore, we now have private parties interested in the 65.88 acres as a whole at the price of \$10,000.00 which we first quoted you, we do not feel that we could sell Lot 1 separately otherwise than to our material disadvantage. This in view that our parties are interested largely in peeler timber values.

I wish to thank you for the consideration you have all along given to this matter and to assure you that so long as our family remain the owner of the Lost Lake property that we will be glad to give

consideration to any suggestion therein that may occur to you. I remain,

Yours very truly,

/s/ PAUL WINANS.

C. C. Pacific Abstract Title Company,
Portland, Oregon.

EXHIBIT No. 68

Hood River, Oregon.
RFD. No. 2,

February 9, 1944.

Pacific Abstract Title Company,
408 S. W. Oak Street,
Portland, Oregon.

Attention: Messrs. Will H. Masters, F. E. Raymond.

Gentlemen:

Reference is made to conversation of February 8 in your office between yourselves and the undersigned, Paul Winans, hereto. It is noted that in said conversation you advised that you had mailed a letter or letters under date of Feb. 7 addressed to Ethel Winans and myself regarding certain title insurance issued by yourselves covering the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, T. 1 S., R. 8 E., W. M.

It is further noted that you failed to grant my request to read your office copy of your letter of Feb.

7, which original letter had not yet been delivered to Ethel Winans or myself at Hood River. This is regrettable since you made no mention in our conversation of your evident intent to avoid your liability as is stated in the final paragraph of your letter of Feb. 7. On the contrariwise I had at the conclusion of our discussion the definite understanding that you were proceeding to make every effort to remedy whatever question of defect had arisen in the title of the above real estate description, requiring only our cooperation in your support. Furthermore, I had your assurance that my previous letters dated January 13 and 21 and February 1 constituted sufficient notice to you to establish claim of loss on behalf of Ethel Winans under the terms of her insurance policy with you.

As regards your remarks in the second paragraph of your letter, title to the property was acquired by Ethel Winans for a good and sufficient consideration. Title insurance was ordered at the solicitation of your Hood River office at the time the expense of an abstract to be required by the government was being inquired as to. And for the further reason that we have a right to place our reliance upon the expert opinion of a reputable concern whose sole business is that of examining and insuring titles. Our contract with you contains no reservation or stipulation in its list of exceptions and conditions restricting the period of time the insured has been the owner of a property and we cannot permit any such change or modification of the Ethel Winans policy as an afterthought. No repre-

sentation whatsoever as to the title was made by us or would have been accepted by you. It is your business to be "familiar with the situation" in any case.

This letter will serve to notify you that we shall hold you strictly liable on the marketability and each and every other provision of your contract with Ethel Winans.

Your letter of February 7 is being referred to Mr. Frederick M. DeNeffe, Attorney at law, Suite 910, Yeon Building, Portland, Oregon, with instructions to initiate whatever action may be appropriate to protect the interest of Ethel Winans.

Yours very truly,

/s/ PAUL WINANS.

EXHIBIT No. 69

State of Oregon
Office of the State Land Board
State Capitol
Salem

February 23, 1944.

Mr. Frederick M. DeNeffe,
910 Yeon Building,
Portland, Oregon.

Dear Mr. DeNeffe:

With further reference to your letter of December 23, 1943, I wish to advise that I have received from

the National Archives in Washington, D. C., a copy of a letter from the Department of the Interior, General Land Office, dated May 12, 1918, which reads in part as follows:

The Governor of Oregon,
Salem, Oregon.

My dear Sir:

In connection with the adjustment of the Oregon school land grant, your attention is called to the following townships, wherein it appears that the State has received indemnity for school sections within reservations, or which were fractional in area, and thereafter attempted to sell the tracts surrendered or tracts shown to be in place by subsequent surveys.

* * *

Item 4. 40 Acres

T. 1 S., R. 8 E., W.M., Sec. 16

A survey of a portion of this township was made from May 14, to 28, 1885, a plat of survey of the portion surveyed being approved on July 30, 1885. The only portion of Section 16 in this township shown upon the plat are Lots 1 and 2 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$, a total of 100.37 acres, the remainder of the section being unsurveyed. A portion of the township including Section 16 was temporarily withdrawn as a timber reserve, on March 28, 1892, afterward called the Bull Run Timber Reserve, and said section is now within a national forest.

A statement showing the unsurveyed school sections which appeared to be within the Bull Run Timber Reserve was prepared by the Surveying Division of this office, in 1895, from which it appears that the S $\frac{1}{2}$ and NW $\frac{1}{4}$, Sec. 16, T. 1 S., R. 8 E., were within the reserve.

In Oregon City Clear Lists Nos. 7, 15 and 21, approved on May 27, 1891, November 19, 1897, and March 14, 1903; The Dalles Lists Nos. 19 and 22, approved March 22, 1903 and July 30, 1907; La Grande List No. 10, approved March 27, 1903; and Burns List No. 8, approved June 28, 1907, the State received indemnity for the S $\frac{1}{2}$ and NW $\frac{1}{4}$ of said Section 16, and 57.14 acres of the 59.63 acres deficit in the NE $\frac{1}{4}$, caused by Lost Lake, a total of 537.14 acres.

On September 13, 1901, in La Grande List R & R No. 348, the State offered the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 16, T. 1 S., R. 8 E., as base for the selection of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, T. 20 S., R. 21 E., which was approved in Clear List No. 22, on July 30, 1907.

It also appears that on February 11, 1889, the State deeded the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 16, to Charles A. Macrum, the deed being recorded in Volume Q, page 21, State Record of Deeds. The tract sold being unsurveyed, the State had no title to the same; therefore, conveyed none by the sale, as was the case in the preceding item.

Very respectfully,

Commissioner

You will see from this record that the State Land Board never did have title to the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, and, therefore, could not have passed title to Mr. Charles A. Macrum. Of course, all of our original files in this matter were burned in the State House fire and all that I have is our notations on the plat. I do find, however, a notation on the plat that Mr. Macrum was offered his money back on this 40 acres, provided, of course, that he would deed this 40 back to the state and I find a notation on the plat that Mr. Macrum refused the refund.

As to your client's remedy for this mistake, I would refer you to Section 106-406 to, and including, Section 106-408, O.C.L.A.

Very truly yours,

STATE LAND BOARD,

LEWIS D. GRIFFITH,

Clerk, State Land Board.

LDG:PV

cc—Mr. Paul Winans

Pacific Abstract Title Co.

(Copy)

EXHIBIT No. 70

Hood River, Oregon.

March 3, 1944.

Pacific Abstract Title Co.,
408 S. W. Oak Street,
Portland, Oregon.

Gentlemen:

I am in receipt of your check No. 20363 for \$60.00, dated February 25, 1944, drawn on The First National Bank of Portland, in this city, and payable to my order, with which check was enclosed your letter in which you state that you have cancelled your certain policy of title insurance issued December 30, 1943, being number 136, H. R. 37882, covering lot 1 and the northeast quarter of the northwest quarter of section 16, in township 1 south, range 8 east, of the Willamette Meridian, in Hood River County, State of Oregon.

In and by said policy of title insurance, you insured me, my heirs and devisees against loss or damage, not exceeding \$8000, which I might sustain by reason of any defects in, or unmarketability of my title to all the estate or interest in said land, and said policy covers the fee simple estate as to said land.

I am returning said check herewith and refuse to accept same or any part of the amount of money represented thereby, and I hereby notify you that said policy of title insurance is now, and has been since the issuance thereof, in full force and effect.

You are further hereby notified that you are now liable to me on account of loss and damage to me, under said policy, in the sum of \$6,000.00, on account of the defect in, and the unmarketability of, the title to the following portion of said land: The northeast quarter of the northwest quarter of section 16, in township 1 south, range 8 east, of the Willamette Meridian, in Hood River County, Oregon, with which said defect and unmarketability you are well familiar, as the details thereof has heretofore been discussed with you, and I hereby demand that you pay said sum of \$6,000.00 to me forthwith.

I am surprised that you are attempting, without just cause to evade your liability and agreement under said policy. Your agent urged and persuaded me to accept said title insurance policy instead of having an abstract made of said land. The cost of an abstract would have been considerably less than the title policy, and in this connection I desire to remind you that I paid you \$65.00 instead of \$60.00 as a premium for said policy.

It seems to me that the insurance business would be an exceedingly profitable business if, when a loss occurred under an insurance policy, the insurance company could evade liability by merely tendering back the money paid by the insured as a premium.

Very truly yours,

/s/ ETHEL WINANS.

EXHIBIT No. 73

November 28, 1952.

Memorandum

Title & Trust V. Parker, et al.

Distribution of \$95,250 received by
Winans family

<u>Distributee</u>	<u>Amount</u>
Ross M. Winans.....	\$15,000.00
Paul Winans.....	10,750.00
Mrs. Fair Hand.....	9,500.00
Ethel Winans.....	15,051.75
Audubon Winans.....	15,000.00
Linnaeus Winans.....	15,000.00
Mrs. Jean McNamar.....	1,000.00
Mrs. Kathleen Nichols	1,000.00
Stanley W. Elder.....	1,000.00
Calvin Bram.....	1,000.00*
Mrs. Evelyn Roberts.....	1,000.00*
Mrs. Marie Bourgo.....	1,000.00*
Expenses of sale, surveying, legal counsel, etc.	2,531.32
Balance cash on hand.....	6,416.93
	<hr/>
	\$95,250.00
	<hr/>

*Not yet distributed.

EXHIBIT No. 74-A

[Exhibit 74-A is an assignment from Stegmann to Parker of the option to purchase. It is attached to the amended complaint, as Exhibit G.]

PLAINTIFF'S EXHIBIT No. 74-B

[Exhibit 74-B is a copy of the option from Winans to Stegmann. A copy is attached to the amended complaint, as Exhibit C.]

EXHIBIT No. 76

[Exhibit 76 is the judgment roll of the case of Chet Parker v. Millard T. Ellis, in the Circuit Court for Yamhill County. A default judgment was entered in favor of plaintiff on October 27, 1950.

This was an action in which Chet L. Parker as plaintiff verified the Complaint July 28, 1950, and which Complaint was filed August 23, 1950, to recover the possession of a 1946 White Truck, Motor No. 140 A 16663, Serial No. W 17 T 382. The default judgment entered therein recited plaintiff had recovered possession of said property.]

EXHIBIT No. 77

[Exhibit 77 appears to be the file of an insurance adjusting company. The first sheet is a carbon copy of a letter reading as follows:]

July 12, 1950.

Mr. Chet Parker,
Route 1, Box 46,
McMinnville, Oregon.

Re: Our file #32458
Stegmann, Heider and Parker.

Dear Mr. Parker:

We are enclosing a draft in the amount of \$8,000.00 in payment of your claim. You will note the draft is made payable to all three men. We forwarded Mr. Heider's release of interest to the company and specifically asked them to issue the draft to Walter Stegmann and yourself. We are sorry for this and hope this will not be a great inconvenience to you.

Yours very truly,

JACK C. NEER COMPANY,
By DONALD C. STOUT.

DCS:be

[Included is a carbon copy of a letter dated July 20, 1950, from Jack C. Neer Co., to Standard Marine Insurance Company, extracts from which are as follows:]

June 20, 1950.

Standard Marine Insurance Company,
c/o Bates, Lively & Pearson,
Yeon Building,
Portland, Oregon.

Re: Policy No. : IM 21518

Assured : Walter Stegmann and/ or
 Otto W. Heider and/or
 Chet Parker

Loss : 5-25-50

Our file : 32458

Gentlemen:

The following is our investigation of the above-captioned loss.

Assured:

Your assured is Walter Stegmann and/or Otto W. Heider and/or Chet Parker. Mr. Stegmann gives his address as McMinnville, Oregon, while Mr. Heider and Mr. Parker give their address as Sheridan, Oregon. The principal insured under this policy is Mr. Stegmann, who is a log operator, operating throughout the western part of Oregon. At the present time, he is in the process of logging in Tillamook County, Section 7, 3 So., 7 W., on the Upper Nestucca River, in an area which is locally known as Square Top Mountain. Mr. Stegmann

owns several pieces of equipment and is known as a careful log operator.

* * *

Salvage:

The salvage to this tractor was very questionable in this case. It would have cost in the neighborhood of \$500.000 to bring a tractor to the scene of the loss, to winch the various parts and pieces of the tractor out of the canyon. Mr. Parker, one of the assureds, therefore, agreed to purchase the tractor as is in the canyon at a cost of \$1,500.00. Using the valuation of \$10,000.00 on the tractor would make Mr. Parker's bid \$3,500.00 for the salvage. Under these circumstances, we felt that this was an excellent offer and no other salvage buyer was willing to travel to the remote territory in an attempt to salvage the tractor when it was fully explained to them what the damage consisted of. We have, therefore, taken a bill of sale from Walter Stegmann and Otto W. Heider to Mr. Parker for the salvage. Because of the various interests in this tractor, we have taken a proof of loss for the full amount of \$8,000.00 and have received from Mr. Parker his check for \$1,500.00 in payment of the salvage.

Remarks:

We are enclosing a release of interest in the above-described tractor signed by Otto W. Heider. May we recommend, therefore, that you draw your draft in favor of Walter Stegmann and Chet Parker, forwarding it to your agent for delivery in the regular manner.

Also enclosed is our check in the amount of \$1,500.00, which is in payment of the salvage, and the above-described policy for flat cancellation.

As this concludes the adjustment, we are closing our file and attached is our expense bill.

Yours very truly,

JACK C. NEER COMPANY,
By DONALD C. STOUT.

DCS:be

Enc.

BILL OF SALE

For Ten Dollars (\$10.00) and other valuable considerations to me in hand paid, the receipt of which is hereby acknowledged, the undersigned hereby grant, bargain, sell, transfer and deliver to Chet L. Parker my full right, title and interest in One HD-14 Allis Chalmers tractor—Serial #HD14-1365 with Kable dozer, 9-ft. blade and Carco single hoist. It is expressly understood that the above-described property is sold by the undersigned in an “as is, where is” condition, without warrants, express or implied, as to merchantability, suitability, quality or fitness for any particular purpose.

Witness my hand and seal this 8th day of June, 1950.

/s/ WALTER STEGMANN,

/s/ OTTO W. HEIDER.

Witnesses:

/s/ LOIS M. PARKER.

EXHIBIT No. 78

The First National Bank of McMinnville
Frank Wortman, President
McMinnville, Oregon

Jan. 10, 1953.

Cake, Jaureguy & Hardy,
1220 Equitable Bldg.,
Portland 4, Ore.

Gentlemen:

Replying to your letter of the 2nd requesting information relative to the Parker case, we enclose the original letter from the Hood River, Ore. Branch of the First National Bank of Portland, which we will thank you to return to us when it has served its purpose.

While we have made notation on this that we called the bank, we have no recollection of the information given, but believe we could not have given much as we did not know of his operations. At that time we held a mortgage on his home here of some \$1,500.000.

We do not believe that we had correspondence regarding checks by Stegmann to Parker's account and if checks were ever so cashed, we would be glad to refer to our recordak records if dates would be supplied. You will appreciate that without dates we could not go through all films to locate any such item.

If and when we get the safe deposit box dates collected, we will send the originals to you.

Very truly yours,

/s/ FRANK WORTMAN,

President.

W-g

Received January 12, 1953.

EXHIBIT No. 80

Earl T. Newbry
Secretary of State
Salem, Oregon

January 21, 1953.

Griffith, Phillips & Coughlin,
Attorneys at Law,
Electric Building,
Portland, Oregon.

Attention: Mr. Black

Gentlemen:

Following is the information requested in our telephone conversation of this date:

Certificate of title No. A1157118 covering a 1946 White Truck, motor No. 140A16663, serial No. 319306, was issued June 7, 1948, in the name of Delmer G. Wilks, Route 1, Box 294, Tillamook, Oregon, subject to a lien of \$3,128.85, dated May 26, 1948, in the form of a Chattel Mortgage in favor of Commercial Bank of Tillamook, Tillamook, Oregon.

On November 22, 1948, the above title was received in this office endorsed for transfer to Walter Stagmann, Route 2, Box 81, Willamina, Oregon, subject to a lien of \$3,817.20, in favor of The First National Bank of Portland, Main Branch, Portland, Oregon. The registered dealer involved in this transfer of title was Diamond Tractor & Equip. Company, 6841 NE Union, Portland, Oregon.

On November 22, 1948, the title was transferred and reissued in the name of Walter Stagmann, Route 2, Box 81, Willamina, Oregon, showing a lien of \$3,817.20, dated November 18, 1948, in the form of a Contract, in favor of First National Bank of Portland, Main Branch, Portland, Oregon.

On July 22, 1950, the above title was received in this office endorsed for transfer to Chet L. Parker, Box 46, Route 1, McMinnville, Oregon, showing him to be both registered and legal owner.

On July 25, 1950, the title was transferred and reissued in the name of Chet L. Parker, Box 46, Route 1, McMinnville, Oregon, showing him to be both registered and legal owner.

On December 24, 1951, a duplicate of this title was issued in the name of Chet L. Parker, Route 3, c/o Oscar Parker, McMinnville, Oregon, showing him to be both registered and legal owner. The application for duplicate title stated that the certificate of title had been lost.

The above title has been received in this office endorsed for transfer to Civic Lumber Company,

18236 NE Glisan, Portland 16, Oregon, showing a lien in favor of Chet L. Parker, 901 E. 26th, Vancouver, Washington. The title is in the process of being transferred to Civic Lumber Company.

If I can be of any further assistance to you in this or any other matter pertaining to this office please feel free to call upon me.

Very truly yours,

EARL T. NEWBRY,
Secretary of State;

By /s/ ROBERT C. GILE,
Supervisor, Motor
Vehicle Division.

The foregoing information was compiled on January 21, 1953, from the official records of the Secretary of State's office.

EARL T. NEWBRY,
Secretary of State.

G:WMc

[Seal of the State of Oregon.]

EXHIBIT No. 81

Claim No. 2-86,646

Automobile Proof of Loss and Release
Collision, Fire, Theft and Comprehensive—
Other Than Total Loss

General Insurance Company of America
First National Insurance Co. of America
Seattle 5, Washington

Policy No.: BL62573.

Assured: Walter Stegmann.

Address: 313 S. Baker Street, McMinnville, Oregon.

Agent: Al Davis.

Expiration Date: 5/22/53.

Make of Car: 1948 Inter & Page & Page Trailer.

Motor No.: HB40017556.

Year Model: 1948.

Trailer No.: SP5333.

Coverage: Form of Collision—250 ded on each.

Claim is hereby made for loss or damage covered
by said policy, as follows:

Date of loss: 5/25/50.

Caused by: Collision, Blaine, Oregon.

Log Truck

Trailer

Towing

Amount Claimed: \$4,304.00, as per vouchers attached, and authorize payment to Chet Parker & Walter Stegmann & Caldwell Finance Co. Except as stated in said policy said automobile belonged exclusively to the insured, was not otherwise encumbered and was used only as stated in said policy; except The loss did not originate or occur through any act, design or procurement on the part of insured or anyone having an interest in the automobile.

The amount claimed hereunder, if paid, will be accepted by the undersigned in full and complete settlement, and the undersigned, in consideration thereof, hereby releases and forever discharges the said Insurance Company from all liability under the above policy for or on account of loss or damage as a result of said occurrence.

In consideration of and to the extent of said payment the undersigned hereby subrogates said Insurance Company to all of the rights, claims and interest which the undersigned may have against any person or corporation liable for the loss mentioned above and authorizes the said Insurance Company to sue, compromise or settle in the undersigned's name or otherwise all such claims and to execute and sign releases and acquittances and endorse checks or drafts given in settlement of such claims in the name of the undersigned, with the same force and effect as if the undersigned had executed or endorsed them.

It is expressly understood that the furnishing of this blank or the preparation of this proof by an adjuster or other representative of the said Insurance Company is not a waiver of any rights of said Insurance Company.

In Witness Whereof, ha
hereto set hand and seal this 24th day of
July, 1950.

[Seal] /s/ WALTER STEGMANN,
 Insured.

Witness:

/s/ ALFRED J. DAVIS.

EXHIBIT No. 82

McMinnville, Ore.

June 23, 1950.

My name is Walter Stegmann, age 29, married and living at 942 Vine St., McMinnville, Ore. On May 25, 1950, I was hauling a caterpillar Tractor up to where I was doing some logging about 10 north of Beaver, Oregon. I had it fastened up on my 1947 Page & Page Trailer and on my 1948 International KB-12 Diesel log truck. I was driving on a crushed rock logging road. I was going up hill. It was quite steep. I had it in "2nd under." I was going up towards "Square Top" forest lookout. I was driving my truck. I was alone. I was

going around a sharp curve when the drive line broke and I had no power. My truck started rolling backward. I found I had no brakes. I think a piece of the drive line must have pierced or cut the air line. The air line is fastened to the frame. The air line was broken after the truck came to a stop down over the bank. I put the air on and it just fizzed out. I tried to back the trailer into the bank. It hit the bank, but it didn't hold and the trailer went down off the side of the road and over the bank taking the truck and cat with it. I jumped out and sprained my leg. The outfit rolled down over the bank and down off the road about 300 feet before it came to a stop.

I have had this truck about a month. I think I purchased it about May 1st, 1950. I purchased it from the Calwall Finance Co., in Portland. I think a Geo. Bremer, of Dallas, Ore., owned it before. I bought this truck from the Calwall Finance Co. for the balance Geo. Bremer owed them and that was \$4700. Then I had to pay Mr. Bremer \$4500 for his equity. So I really paid \$9200 for the truck. I also had to pay an additional \$300 to Mr. Bremer for the license. This included the truck and trailer combination. That is, it was the 1948 International KB-12 Diesel Log Truck and the 1948 Page & Page Trailer. Mr. Chester Parker, McMinnville, Ore., has a second mortgage on this truck and trailer for \$4000. I borrowed money on it to buy some timber. I owe a total of \$4700 Calwall Finance Co., and the \$4000 to the Parkers on their second mtg.

I had two long chains, hi-test, 28 feet long on it the truck and trailer. I had 3 timbers on it. It had log links on it. I had a old chain 28 feet long and one 20 feet long, also.

I have read these pages and think they are right as I remember.

/s/ WALTER STEGMANN.

EXHIBIT No. 92

Otto W. Heider
Attorney-at-Law
Sheridan, Oregon

November 26, 1952.

Messrs. Griffith, Phillips & Coughlin,
Attorneys at Law,
Electric Bldg.,
Portland 5, Oregon.

Gentlemen:

Answering the letter of the Title and Trust Co. and answering your questions on the two Walter Stegmann mortgages, I might say that I do not think that either one were paid out to me, they were taken over by other parties. Stegmann went entirely broke and the equipment was repossessed and taken over by other parties. There will be no date of final payment or amount either. That is my recollection of the transaction, although it was several years ago and that is as I recall it now. I know others had to help him out when he became insolvent, and that was in 1949 or 1950 as I recall now.

I wish I could give you more detailed information. I am,

Respectfully yours,

/s/ OTTO W. HEIDER.

OWH:rb

November 24, 1952.

Mr. Otto Heider,
Attorney-at-Law,
Sheridan, Oregon.

Order No. Y-16-333

Dear Sir:

Relative to my conversation with you of October 24th, I have recontacted the Attorneys for Title and Trust Company and find that they desire a letter addressed to Griffith, Phillips & Coughlin, Electric Bldg., Portland 5, Oregon.

They would like the letter to set out the date of the final payment and the amount of the final payment on the following obligations:

1. Chattel Mortgage from Walter Stegmann to Otto W. Heider for \$4,400.00, dated November 20, 1947, and filed November 24, 1947, as Instrument #16077, covers one Page & Page Trailer.

2. Chattel Mortgage from Walter Stegmann to Otto W. Heider, dated September 23, 1949, and filed October 12, 1949, as Instrument #21725, for \$3,720.00, covers White truck and trailer.

I wish to apologize for putting you to this trouble and explain that our Attorneys feel that a letter would be acceptable to them and would not necessitate them calling you as a witness.

Please accept my thanks for your early reply which may be sent directly to the office of Griffith, Phillips & Coughlin.

Yours very truly,

.....

EXHIBIT No. 93

Memorandum

On August 11th, 1951:

Walter Stegmann came to our place for the purpose of looking over some property at lost lake in section 16. township 1. south 8 east willamette Meridan Hood River County Oregon,

This was the first time that I had Walter Stegmann, we then drove to lost lake, Stegmann driving his Car A Buick convtible. My Brother Paul and Family, My self Ross Winans, date Aug; 11th. 1951, arriving at lost lake we then went to the meander corner North east then to north west to quarter corner A bronz marker mounted On iron pipe a bout 36 inches a bove the ground, then from thare to the South east boundery on lake shore, Returning to car and Home, arrived Home A bout 4.30 P.M. Aug 11th 1951,

Stegmann, taking taking option on The property at Lost Lake, in section 16 township 1 south 8 east willAmtte meridan Hood River County Oregon,

Stegmann gave his check on The First Natinoal Bank of Mcminnvllle Mcminnnlle Oregon, for the OpTion for the lake property,

On August 18th. 1951, second trip to Lost Lake Survyors Bogar and Haynes, Paul and Ross Winans Drove to the Lake in M. Bogar Car August 18th. 1951, Starting at the North East Meander Corner from thare west to quarter corner Bronz marker, North West, The Stegmann Bros: Walter and Carl

joined us that 18th. aug. 1951 Lake, as the 18th. fell on saterday we did not finish returned home, That evening,

On August 25th. the Surveyors Bogar and Kunz, returnd To finish the survy around the 25. and 88.100 acre tract, Walter StegMann, Came out with Paul Winans, on that day, Paul Boys Alfred and, Ralph; all so Allen Winans, August 25th. 51. now that we had finish The outer bounders for the prop-erty, as yet thare was the 8 and 8 tenth Acre tract to be taken out of the 25. and 88.100 acre tract, then Walter Stegmann and Chet Parker and Parkers Boy came and went up to The lake and run lines we our selves did not go out them; this was About 27th. 1951, aug.

Later on or About the 30th. august 1951 Stegmann and Parker and the Parker Boy returned Walter Stegmann Driving a Ford Mercury Sedan, My Brother Paul Winans and my self Ross Winans Road to the lake the 30inst: with Stegmann and Parker, we arrivid at the Lake and ran lines and Iron pipe at corners all so masured with a one Hun-dred foot steel tape, and untill that time I did kno Whom the man Parker was he then intrduce him self as Chet Parker and Said call me Chet; all so said this is the most Beautiful Lake I Ever saw; Stegmann is ahard Man to deal with but I Must have some of the Property for my self,

Parker used what we call astaf compas Most all timber Crusers use the same;

EXHIBIT No. 94

Bargain and Sale Deed

Know All Men by These Presents that Ethel Winans, a single woman now and at all times since acquiereing title to the real property hereinafter described of Hood River, Oregon, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration to me in hand paid by Stegmann of, Oregon, have bargained and sold and by these presents do grant, bargain, sell and convey unto the said Stegmann, and unto h. . heirs and assigns the following described real property in the County of Hood River, State of Oregon, to-wit:

The Northeast quarter of the Northwest quarter, and Goverment Lot One in Section 16, Township 1 South, of Range 8 East, of the Willamette Meridian, containing 65.88 acres of land, more or less,

Saving and Excepting therefrom the following described tract of land: Starting at the existing Meander Corner at the intersection of the Section line between Sections 9 and 16, Township 1 South, Range 8 E.W.M. with Lost Lake as set by the General Land Office and now being in nine inches of water, and then following in a Southwesterly direction along the meander line of Lost Lake to an 1" iron pipe set in the edge of the water, which point may also be reached by starting from said Meander Corner and running thence West 43° 00' South a distance of 100 feet to a point, thence West 42° 30' South a distance of 100 feet to a point, thence West

38° 10' South a distance of 100 feet to a point, thence West 38° 40' South a distance of 100 feet to a point, thence West 32° 10' South a distance of 100 feet to a point, thence West 30° 30' South a distance of 100 feet to the said 1" iron pipe set in the edge of the water on the shore line of Lost Lake, which 1" iron pipe is the true point of beginning for the land hereby excepted (and which said pipe has a 5" live cedar bearing tree bearing West 16° 00' North a distance of 22.05 feet and a 14" dead cedar bearing tree bearing West 07° 40' South a distance of 26.25 feet), thence West and parallel to the East and West center line of said Section 16 a distance of 200 feet to an 1" iron pipe (having a live Hemlock bearing tree 36" in diameter bearing South 07° 00' West a distance of 6.42 feet and a white fir bearing tree 8" in diameter bearing East 25° 00' North a distance of 13.17 feet), thence South and parallel to the North and South center line of said Section 16 a distance of 286.12 feet to a point, thence West and parallel to the East and West center line of said Section 16 a distance of 137.84 feet to an 1" iron pipe (having a live cedar bearing trees 24" in diameter bearing South 09° 00' West a distance of 3.33 feet), thence South 33° 00' West a distance of 673 feet, more or less, to the Southwest corner of said Government Lot One, thence East along the South line of said Government Lot One a distance of 848 feet, more or less, to the meander line of Lost Lake, thence in a Northerly direction following the meander line of Lost Lake a distance of 900 feet, more or less, to the point of beginning.

EXHIBIT No. 101

[Exhibit 101 is a deed from Winans to Parker. It is attached to the amended complaint as Exhibit B.]

EXHIBIT No. 102

United States Department of Agriculture
Forest Service
Mount Hood National Forest

L

Acquisition—Mt. Hood

General

September 27, 1951.

Registered Mail
Return Receipt Requested

Mr. Chet L. Parker,
McMinnville,
Oregon.

Dear Sir:

We recently noticed that a deed had been recorded in Hood River County conveying to you the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 16, Township 1 South, Range 8 East, W.M.—\$90,000.00.

We wish to inform you the foregoing described tract of land has never passed from federal ownership and is a part of the Mt. Hood National Forest.

Information confirming this may be obtained by

2208

Chet L. Parker, et ux., vs.

writing the clerk of the State Land Board at Salem,
Oregon.

Very truly yours,

/s/ LLOYD R. OLSON,
Forest Supervisor.

EXHIBIT No. 103

Pacific Telegram

Odell, Oregon, Nov. 22, 1951.
3:47 p.m.

Check: Pt ID 1613. 23 wd.

To: Chet L. Parker,
302 E 7th St.,
Vancouver, Wash.

Can you contact me Congress Hotel, Portland,
tomorrow, 1:30 p.m. to 3 p.m. Re statement believe
mutual interest best served through primary con-
ference with you.

/s/ PAUL WINANS.

EXHIBIT No. 106

Order No. HR12-987

Hood River County Branch
Title and Trust Company
Hood River, Oregon

August 30, 1951.

Chet L. Parker,
106 E 33 Street,
Vancouver, Washington.

Property: 40 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$ & 25.88 acres, Lot
1, Sec. 16, Tp. S, R. 8 S., EWM.

Title Insurance Policy: Owner's \$8,000.00.

Increase of Insurance From: \$8,000.00 to \$125,-
000.00.

Abstract of Title:

Reissue	\$ 45.00
Increase	385.00
	<hr/>
Total	\$430.00
Paid on account.....	25.00
	<hr/>
Balance Due	\$405.00

[Stamped]: Paid Aug. 30, 1951, V.V., Title &
Trust Company, Hood River, Oregon.

EXHIBIT No. 107

[Exhibit 107 is a title report from Hood River County Branch of Title and Trust Company, addressed to Chet L. Parker, dated August 15, 1951. A copy is attached to the amended complaint as Exhibit D.]

EXHIBIT No. 112

Marsh & Marsh
Attorneys-at-Law
McMinnville, Oregon

September 25, 1951.

(Copy)

Title and Trust Company,
325 S. W. Fourth,
Portland, Oregon.

Re: Policy No. HA12-987.

Gentlemen:

On September 12th, 1951, you issued your Policy No. HR12-987 in the sum of \$125,000.00 to Chet L. Parker, insuring him against loss or damage not exceeding \$125,000.00, which he may sustain by reason of any defects therein or unmarketability of the insured's title to all of the estate and interest in the real premises described therein.

Mr. Chet L. Parker has been notified by your Hood River office that there is a serious defect in the Title to that portion of the property described as the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 16, T. 1, S. R. 8 E. of the Willamette Meridian in Hood River County, State of Oregon.

This is to notify you that in accordance with the provisions in the Policy that a defect, lien or encumbrance exists.

As we understand the situation, the United States Government now contends that the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 16, T. 1 S R. 8 E. of the Willamette Meridian in Hood River County, State of Oregon, is owned by it. It is the contention of the Government that this portion of Sec. 16, T. 1 S., R. 8 E., of the Willamette Meridian was never surveyed and hence the title did not pass to the State of Oregon, which apparently was a grantor in the opposed chain of Title.

Mr. Parker has not personally made a check of the title to see whether the defect is serious or not but we understand it is the contention of the Government that title to this part of the property is vested in the United States of America.

Very truly yours,

MARSH, MARSH & DASHNEY,

/s/ FRANCIS E. MARSH.

FEM:kmw

cc—Chet Parker.

EXHIBIT No. 113

November 2, 1951.

Griffith, Phillips & Coughlin,
Attorneys at Law,
Electric Building,
Portland 5, Oregon.

Re: Chet L. Parker.

Gentlemen:

I wonder if we could have an answer to our letter of recent date regarding the above-entitled claim.

Very truly yours,

MARSH, MARSH & DASHNEY,
FRANCIS E. MARSH.

FEM:kmw

EXHIBIT No. 115

8-13—cont.

Walt has a option on, I-E, 8-N, Sec. 16. Dinner and lunch, Hood River, and stayed all nite. Hood River, total \$12.00.

The timber is very good indeed, so am buying. Stegmann's option tonite or tomorrow. He wants \$25,000.00 and the option calls for a total price of \$100,000. Stegmann has paid \$1,000 now and is to pay out of the money I pay him another \$4,000 on election to purchase.

8-14

Drove to V. Wn. R. M. Took G.M.C. truck to Mc. and worked on Peterbilt rest of day. I seen Multnomah Plywood today about selling them the Lost Lake property. They need very badly the peelers and Mr. Kenny is going up tomorrow to look at it. Walt Stegmann is going along to show Kenny the $\frac{1}{4}$ corner. I wish I had more time so as Stegmann's hours would be less. As of this time on he is working on the lines and attempting to find the SW. Cor. Lot 1 and the SW. Cor. NE $\frac{1}{4}$ -NW $\frac{1}{4}$, which is going to be hard to find.

Oregon Tractor wants our old steam shovel for \$300.00. That is probably all it is worth.

8-15

Sold Ore. Tra. shovel. Sold Willis Manufacturing Co. V. Wn. 2x4 lumber at Cottrell Mill.

Mr. Dufur of the Ore. State Industrial Ac., was to see Lois and to audit our books.

8-16

Drive to Gold Beach and looked at Mr. Henning's timber up near the Illoise River. Stayed all nite in hills, packed 4 miles; damed good and tired. Timber no good.

8-17

Drove home from G. B. and stayed all nite V. Wn. Wanda Grey was here and wanted to know of any one that could finance her logging. I could not

help her. Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would.

8-18-51

Lois is trying to trade her folks farm off for something they could use.

Walt Stegmann and I seen P. Winans and told him that from now on he would be dealing with me, as I had bought all of W. Stegmann's interest in the property at Lost Lake. However, we agreed Walt S. would do the surveying for us both on the reserved land and if Mr. Winans wants more of the swanp land he is to survey for that, too. I said I would pay the bill and for any maps drawn.

Mr. Winans hunted for his \$8,000 Title Ins. policy, but could not find it. I don't know what good it would do me. I sure did get tired of listening to Stegmann and Winans talking of their deal on Winans' housing project. It seems Walt is going to help Winans finance some houses if they can get together. They sure are doing a lot of dickering—am sure glad I don't have nothing to do with it. They asked me what I thought of it. I told them I knew nothing about housing.

8-19

Looked at some timber.

8-20

Lois and her folks completed deal with the Roy Merriots. Oscar and Charley finished the settling of the estate.

Lois and I met with the Directors of Mult. Ply. 7:30 P.M., Port., to discuss the Lost Lake deal. The deal as follows: Total price \$180,000 on their cruise; \$67,000 down and \$33,000 carried till next year, then for every M. M. they log another \$25,000 till \$180,000 is paid, plus 5% interest. Also I am to release Bear Creek timber and in return I will take mortgage on some Southern Ore. timber they own.

8-21

Clyde Smith called and said they probably take timber and wanted me to show two of the directors the timber. Walt S. is too busy to show them the corners. He and Winans are building houses it seems. Oh well, I will take them tomorrow.

8-22

Myron and I drove to Hood River and showed Mult. Ply. the corner then left them at Lost Lake.

8-23

8-24

Showed people our ranches at Ballstrom.

8-25-51.

Looked at timber and purchased a Stetson hat—\$12.50.

8-26-51—Sunday.

We three had a lovely day today. Went to see my brothers. Then came home. I really like to take

a lunch and we three stop along road and eat. Floyd wants to sell his $\frac{1}{4}$ interest for the sum of \$3,000

8-27-51.

Completed the deal of buying Floyd out today at Marsh & Marsh. Mc then drove to The Dalles—stayed Ore. Motor Motel—called Paul Winans at Hood River and asked him when he wanted to go to Lost Lake and set the corners for the reserved land he gets. He said he would let me know when, in the very near future.

8-28-51.

I and my son and Walt Stegman drove to Lost Lake so I could explain to Walt on the ground that I did not want Winans to get any timber in their reserved area, and for him to try and run the lines accordingly. After all he is getting paid by me and if Winans wants someone to run the lines for him he can pay for it. Walt informed me he would do and run the lines as Winans and I agreed on. But we would have to agree before he could run lines or set any corners. Stayed all nite The Dalles.

8-29.

Drove to Port. to get some legal advice. Drove back to The Dalles.

8-30.

Bonnie Butler was here to see us about some timber on 15-Mile Creek.

Lois and I drove to Hood River to get title ins. on the Winans property. The cost, \$405.00 plus \$25.00 already paid.

It seems like I have so much timber to look at and never can get around to it all—so damn much walking.

Seen Walt Stegman in town and he had been with Winans today working on their housing financing. And Paul Winans said to tell me if he seen me that he could and would go to Lost Lake now and agree with me on the land to set aside. I told Walt tomorrow, and I called Paul and confirmed it. Then drove back to The Dalles. The Title Co. said I could get policy tomorrow evening.

8-31-51.

Myron, Walt Stegman, Paul and Ross Winans and myself went to Lost Lake and set out the 8 8/10 acres. I hope Walt Stegman's surveying is O.K. Seems like a lot of land. I had to argue with Paul Winans a lot and he sure got mad. I also had to run instrument while Walt measured and run chain. It was a good thing he told me how—I know so little about running lines and setting corners. Maybe he doesn't charge too much at that. Got back to Hood River 6:00 p.m., too late to get title policy—but I guess they will keep it as long as they are paid.

9-1-51.

Lois and I went to Mc to see some timber on Pea Vine. (No good.)

9-2-51.

Lois and I stayed with her folks.

9-3-51.

Port. Blakely Milling Co. wants me to look at 60 mm. of pine they have at Pendleton, Ore.—6100 Arcade Square, Seattle, Wn.

9-4-51.

Lois, Paul Wardell and myself drove to Port. Lois stopped off and finished up the escrow—with Mult. Ply. Bear Creek Timber.

Paul Wardell and I drove on to Hood River to see Paul Winans—Walt Stegman and Paul Wardell are working out a deal on Winans' housing. I am having nothing to do with it. The two Pauls did a lot of talking, but I stayed outside and did not hear any of the conversation. Then I drove P. Wardell to H. River and he checked the court house records and found that P. Winans at various time had judgments against him and he was not going to have anything to do with him at all. Then drove to Port. Got home 8:00 p.m.

Winans is too busy building houses to talk very much with me about Lost L., but I guess other than running lines and setting corners is about all that is left to do.

9-5-51.

Lois, Myron, and I drove to The Dalles to look at timber on 5-Mile Creek.

9-6-51.

Stayed all nite Ore. Motor Motel. Looked at timber—DuFur. Sister has changed her mind and is not going to live with us.

9-7-51.

Lois, Myron and I drove to Lost Lake and stayed all nite. Bought \$7.50 groceries Hood River. Ate breakfast Goldys, The Dalles—\$2.95.

9-8-51.

Left Lost L. 9:00 a.m. Met Bonnie Butler, Hood River, and he is trying to get us to go to Pendleton Round-Up. He said we could stay with friend—C. L. Jamison—Cattleman's Assn., Pend. Winans called and said they were ready to deal finish.

Lois and I drove to Mc to get bank draft from Jake Wortman, to pay the Winans tomorrow. Lois bank draft to the amount of \$95,000—is payment in full to Ethel Winans.

9-10-51.

Winans said he might want more land and we agreed on a price of \$4750.00 for the land—swamp—and creek 300—?' N. of S.W. cor. Lot 1.

If Walt Stegman and Mr. Hines can figure the met. and bounds of this awful piece of land. It sure will be a hard one to figure. It will cost more to engineer than the land is worth. Walt and Mr. Hines sure don't agree on their surveying. I left

Lois to get Mr. Abraham's to look after our interest in the Winans deal, because I had to go to Dufer, Ore.

Lois got the deed—bargain and sale 4:30 p.m., too late for Mr. Abrahams to get a good look at it.

Lois and I finally decided to put it in my name instead of Associated Engineers, but we can write it in, I guess.

Lois and Abrahams decided to wait till morning to close deal.

I wasted my day at Dufer, waiting for a cruiser to show me timber, but will go back tomorrow. So Lois will have to finish the Winans deal.

Walt Stegman said they had to copy the description 3 or 4 times because he and Hines could not agree on the lines and amount of acres. I paid Walt for his work on the lines and corners, Winans' property, in full. I guess we don't need him any more. It is up to Lois and Abrahams to finish and complete the deal—payment and looking over deed. I sure am tired of walking over the hills these hot days.

Walt said if he would have had anything to do with the deal he would have told Winans to go to hell.

9-11-51.

Very hot. I went to 15-Mile Creek, got to Hood River after dinner and asked Title Co. for Owner's

policy. They said it would be ready the (evening) 12th.

Left Hood River to be at Abraham's office at 9 a.m. We checked records to see if judgments were cleared. I gave Mr. A. the draft for \$95,000, which he took to V. Parker's office to pay Winans and pick up deed. I got tired of waiting, so went to see what was keeping them. Found that Mr. Winans had not yet arrived. Talked briefly with Mr. Parker and Abraham and left Mr. A. to finish deal. I was very reluctant to leave so much money without getting a deed but felt Mr. A. would look after the money, which he did. Met Mr. A. in court house where we recorded deed, then we went to bank and had the checks transferred to Chet's name. \$4750 for land and \$105.50/100 for revenue stamps. Mr. A. put on too many stamps. Then went to Mr. A. office where I paid him. Had no check, so paid him in cash. Mr. Winans told Mr. A. quote, "There is a technicality in the title," but Mr. A. says it wasn't important. As Title and Trust didn't show anything, it must not be. Glad this deal is over with and paid for. Staying at Ore. Motor Hotel to-nite. It seems like all Myron and Chet do is look at timber and bring rattlesnake rattles home.

9-12-51.

Ate breakfast, dinner, supper, Goldeys, \$10.10, Ore. Motel. Look at timber near Dufur. I will have to go to Canada to look at 431 m.m. in very near future. I would like to have Mr. Olivers Ranch at John Day. However they want a lot of money.

9-13-51.

Drove to Hood River, then Stevenson about logs—Mr. Goheen. Then to Bingen to see Hart Lehman—not home—about money he owes us. Then drove to Port. to get purchases policy out of bank. Then drove to Coring to see Mr. Ashford. Then drove to Hood River. Stayed at Lone Pine, \$5.00. Supper, pops, \$2.95.

9-14-51.

Lois, Myron and I left Hood River noon. Breakfast and cafe, \$2.75.

Lois and I went to the T.&T. Co. Hood River to turn in our purchasers policy for a owners policy now that we have it paid for and deed recorded.

Attention.

Ed Miller told Lois something was wrong, so Lois came and got me. It seems the Forest Service lays claim to a part of the property. He seen someone at the court house as he was checking title—that told him they owned it. However then he gave us the owners policy and I left very disturbed about it as I have this property sold. Wonder I can get out without costing me too much. Mult. Ply. cruising. Their att. fees making up papers.

Drove to Mc to consult Gene Marsh. He said nothing to worry about, as we had title policy.

Lunch at Brener's, 2.75.

Hutsell's Motel in Mc, 5.00.

Dinner at Palm Cafe, 2.75.

Phone call from Port., 1.35.

Looked over equipment at Mc and cleaned shop. Guess I'll give fruit to some needy people as we've moved it so often since the house burned. Don't like the way yard is kept.

Now I suppose this title is going to cut short our trip to Canada. Sure hope it isn't too serious as the timber is worth all of \$180,000. Now that there is a question about the title, probably we'd better refuse any more financing for Mult. Plywood Lost Lake deal. This way we can avoid difficulty with them since maybe we can't furnish title, because they have done a lot of work on it and we said they could have it. At least we won't furnish the \$100,000 they wanted us to set aside for their S. Oregon deal. Maybe then they'll say "No" on Lost Lake as that way they'd be short of money and couldn't handle both of them. It sure looks bad, the large cost of road building necessary to log timber if the back forty can't be logged with the front piece. Probably can't even afford to log Lot 1.

9-15-51.

Seen Walt Stegman a.m. Then went to work on the porch roof at Mc—painting, etc. 1 qt. paint, \$1.87 (copper). Fix eves trough, solder, .50. Window glass, \$2.00. Courtemanche. Tire repair, Shell Service, \$1.00 (all cash).

Ate supper with Oscar and Alice. Stayed all nite Hutsell's, Mc, \$5.00 Breakfast, lunch, Palm Cafe, Mc, \$7.25.

9-16-51.

Ate breakfast, Palm Cafe, \$1.75. Then Lois, Myron and Connigo drove to Hood River. Ate lunch at Cascade Lock, \$2.95. Dinner, Apple Blossom, \$3.25. Stayed all nite Lone Pine, \$7.00.

Winans was trying to get in touch with me. So I called him. He wants to see me in a day or so. Don't know why. Called Winans 11:45 a.m. He could not hear me at all. So phone call waste of time.

9-17-51.

Myron and Connigo met Mr. Olsen (cruiser) Vancouver Ply. Wn. and we all went to look at the Lost Lake property. Mr. Hurry is his boss. He did not think much of it. Ha. Breakfast, lunch, dinner, pops, \$12.95.

9-18-51.

Lois seen Dr. Corti 6:00 p.m. Met Mr. Crom and Mr. Jack Patrick of the Patrick Lumber Co. Terminal Sales Bld. and we all went to look at the Lost Lake property. He was very mucho impress. Stayed all nite. \$6.00, Port. Motel, food.

9-19-51.

After Lois finished taking her X-rays we drove to Mc. I talked with Jean Marsh about title to the

Lost Lake property. No satisfaction. We then seen Walt Stegman.

Ate breakfast, lunch, dinner (Palm), Mc, \$9.75. Stayed Hutsell's. Wanda Grey was here, 9:30 p.m., with some man.

Worked on Peterbilt, and Myron.

9-20-51.

Attention.

Worked on Peterbilt—Myron. The Title & Trust people were down to see Frank Marsh and myself. Jean was absent. One hell of a mess. Like all Title Ins. Co. or any Ins. Co.

Mr. Rainey wants to sell us 10 acres of land, \$4,200. We are offering him \$3,000. ?? Walt Stegman was here tonite—8:45 p.m.

9-21-51.

Chet and Myron worked on Peterbilt, put both pickups in garage. Generally got things ready to leave. I went in to see Dr. Corti. X-rays turned out to be only aggravation from ankle. Called World and Continental about my insurance. Drove back to Mc. Had both cars greased. Left at 6 p.m. for folks to get boots. Met Wanda Grey at Willamina. She said the fire was at the Blaine summit. We drove on to Hebo to find out. Proved to be on the E. fork of Trask. Very bad fire, tho. Went on to folks. Stayed overnight.

9-22-51—Saturday.

Left Oceanlake about 10 a.m. Drove to Mc. Saw Oscar and Edna. Also called Mr. Tilson with another offer on the Rainy property. Was not able to buy it for \$3500 cash or trade Stutzman's mortgage and \$800 for it. Maybe it's just as well. Took Ply. and Mercury. Left Mc at 1:20 p.m. Chet arrived in Seattle at El Rancho Motel at 5:20. I came at 5:45. Motel, \$5.50. Dinner, \$5.00.

9-23-51—Sunday.

Drove to Vancouver, B. C. Stayed all nite Pacific Auto Court, \$8.00. Meals—breakfast, lunch, dinner, \$15.25. Bridge toll, .25 @ \$2.50. Telephone, \$1.95. It started to rain.

9-24-51.

Lois called some cruisers, Forest Service, and etc. We did not get much satisfaction, so checked out 12:00 noon. Destination Kam Lups, B. C. Breakfast, lunch, V., B. C., \$7.50. Drove to Ashford—dinner \$3.75. Changed our mind after talking to some people at Ashford. So drove to Seattle and stayed at the El Rancho Motel—7½ miles south—city centre.

Policy #HR-12-987.

9-25-51.

Breakfast Seattle, \$2.95.

Left Seattle to go to The Dalles to look at ranch, Willow Creek. Lois looked at ranch. No dice.

Lunch, Yakima, Wn., \$5.20. Dinner, Goldeys, Dalles, \$3.90. Motel, The Dalles, Motor Motel Hotel, \$8.00.

Attention.

Marsh sent letter to Title & Trust.

9-26-51.

Breakfast, Goldys, \$2.50. Left a note for Mr. Bonnie Butler and left for Van., Wn. Left Van., Wn., and went to McMinnville. Ate lunch Van., Wn., Hollands, \$3.90. Dinner Mc, Palm, \$4.20. Parking, \$1.25.

Lois got letter from bank, of Bank of California, paying * * *

EXHIBIT No. 117

Multnomah Plywood Corporation

Nomah-Ply

1500 S.W. Harbor Drive, Portland 1, Oregon

I, Walter L. Bryson, Secretary of Multnomah Plywood Corporation, hereby certify that the following is a true copy of excerpt of Minutes of Board of Directors of said corporation, held on August 20, 1951, this being all the minutes on the subject therein discussed:

“Mr. Clyde Smith, together with Mr. and Mrs. Chet Parker, presented some details having to do with the Lost Lake tract of timber which the Parkers are offering to the company for a total price of \$180,000. The Parkers said they would accept a down payment of \$25,000. We owe the Parkers a balance of \$42,000 on the Nastucca River tract which we are purchasing from them. They are willing to apply this \$42,000 to the Lost Lake tract which, together with the \$25,000 will make a total of \$67,000. Inasmuch as they want \$100,000 applied to this purchase, they are willing to accept the difference of \$33,000 at the time that we would start logging operations. The balance of \$80,000 would be required of us at about the rate of \$25,000 a month figuring that logs would be removed at a rate of about 1,500,000 feet a month.

The Nastucca River tract balance of \$42,000 could be paid for after January 15, 1952. The Parkers

stated that they would be willing to deposit \$100,000 for our use if we needed it to handle the McFadon tract, if that came to an issue and would in turn be willing to accept as security for the \$100,000 title to the Barbour tract.

The tract in question is supposed to cruise about 6,000,000 feet. Roy Kenny's incomplete cruise is in excess of 4,000,000 feet. He reports about 60 per cent peelable logs and of very good quality. The Parkers have offered us the use of their boom at Hood River for rafting purposes. Smith estimates a cost of \$60.00 a thousand feet at Hood River, including the stumpage. Mr. Parker said a road about one-half mile in length would have to be made in order to reach the timber.

After Mr. and Mrs. Parker left the meeting, further discussion and consideration took place. Mr. Smith said he had not seen the timber but intended to do so this week and at the same time invited others of the Board to go with him. It appeared that the Board wanted more information as well as time to give the proposition, so far as financing is concerned."

In Witness Whereof, I hereunto set my hand and Seal of said Corporation, this the 5th day of January, 1953.

[Seal] /s/ W. L. BRYSON.

EXHIBIT No. 118

In the District Court of the United States
for the District of Oregon

No. 6242

TITLE AND TRUST COMPANY, a Corporation,
Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, WAL-
TER STEGMANN, ETHEL WINANS,
PAUL and ELLA G. WINANS, Husband and
Wife; ROSS M. WINANS, AUDUBON
WINANS, LINNAEUS WINANS, R. C.
ELDER, STATE OF OREGON, HOOD
RIVER COUNTY, a Political Subdivision of
the State of Oregon, and UNITED STATES
OF AMERICA,

Defendants.

COMPLAINT

Comes now the plaintiff and for cause of action
alleges:

I.

That plaintiff is a corporation organized under
the laws of the State of Oregon and authorized
thereby to engage in the business of insuring title
to real property.

II.

That by Act of Congress February 14, 1859, ad-
mitting Oregon as a state of the United States of

America, 11 Stat. at Large 383, Chapter 33, Section 4, Sections 16 and 36 in each Township in said state not sold or otherwise disposed were granted to the State of Oregon for use as school lands and that the United States of America is hereby made a party defendant to this action for the purpose of determining what estate or title to the property hereafter described passed to the State of Oregon pursuant to said act of Congress, and determining the validity of the claim of ownership of said property made by the United States of America as hereafter more fully described.

III.

That at the time of the admission of the State of Oregon into the United States of America, the following-described property was a part of the public lands of the United States of America and said property had not been sold or otherwise disposed of; and that subsequent to the admission of said state and prior to February 11, 1889, no patent has been issued on said property by the United States of America:

The Northeast one-quarter of the Northwest one-quarter of Section 16, Township 1 South, Range 8 East of the Willamette Meridian, Hood River County, Oregon,

(hereinafter referred to as "Lot 2").

IV.

That on or about February 11, 1889, the State of Oregon, acting by the Board of Commissioners for

the sale of school, university and other state lands, conveyed Government Lot 1 in Section 16, Township 1 South, Range 8 East, W.M., and the said Lot 2 to Chas. A. Macrum, and that thereafter to the present date Hood River County, as a political subdivision of the State of Oregon has assessed, levied and collected real property taxes on said Lot 2.

V.

That prior to June 17, 1892, no government survey of the said Lot 2 had been made and approved by the Commissioner of the Land Office of the Department of Interior of the United States of America.

VI.

That on June 17, 1892, the said Lot 2, by proclamation of the President of the United States, was set apart and included within that portion of the Mt. Hood National Forest, known as the "Bull Run Timber Reserve."

VII.

That on or about April 25, 1902, the said Chas. A. Macrum conveyed the said Lot 1 and Lot 2 to W. R. Winans by warranty deed.

VIII.

That some time prior to July 30, 1907, the State of Oregon selected the Northwest one-quarter of the Northwest one-quarter of Section 28, Township 20 South, Range 21 East, W. M., as lieu lands for the said Lot 2, and on July 30, 1907, the Commissioner

of the General Land Office of the Department of Interior of the United States of America officially approved said selection of lieu lands.

IX.

That on or about December 29, 1943, the said W. R. Winans and Mary Winans, his wife, conveyed said Lots 1 and 2 to Ethel Winans.

X.

That since December 29, 1943, the defendants, Ethel Winans, Paul and Ella G. Winans, husband and wife; Ross M. Winans, Audubon Winans, Linnaeus Winans and R. C. Elder, have claimed and had an undisclosed interest in the said Lots 1 and 2 and have received undisclosed portions of the moneys hereinafter referred to.

XI.

That at all times subsequent to December 29, 1943, the defendant Paul Winans has been the duly authorized and acting agent and representative and spokesman for the defendants named in Paragraph X above, and the defendant Ethel Winans has acted as trustee for said defendants named in Paragraph X.

XII.

That on or about December 30, 1943, defendants Paul Winans and Ethel Winans made application for and on said date the Pacific Abstract Title Company, by the Hood River Abstract and Investment Co., its agent, issued to Ethel Winans a policy of title insurance No. 136-HR-37882 in the face amount

of \$8,000.00, insuring a fee simple title in said Lots 1 and 2 in the said Ethel Winans free from all encumbrances, subject to certain exceptions contained and set forth in said policy not material herein.

XIII.

That shortly prior to December 30, 1943, the defendant Paul Winans had carried on certain negotiations with the United States Department of Agriculture through the supervisor of the Mt. Hood National Forest, relative to the exchange of said Lots 1 and 2 for other government timber lands, and that on January 28, 1944, the said supervisor advised Paul Winans that the Government owned said Lot 2.

XIV.

That on or about February 23, 1944, the defendants Paul Winans and Ethel Winans retained F. M. DeNeff as their attorney and agent to represent them in connection with the claim of ownership to Lot 2 made by the United States of America and in connection with their rights under said policy of title insurance, and that on said date said defendants and F. M. DeNeff were advised of the facts set forth in Paragraphs V, VI and VIII above.

XV.

That on March 3, 1944, the defendant Ethel Winans made demand upon the said Pacific Abstract Title Company under said policy on account of a defect in and unmarketability of her title to said Lot 2, and the claim of ownership of the United States of America thereto.

XVI.

That on or about April 3, 1944, said defendant Ethel Winans, in consideration of the sum of \$3,000.00 executed a general release in favor of the said Pacific Abstract Title Company and Hood River Abstract and Investment Co. on account of the claim accruing to her under said policy of insurance on account of the defect in and unmarketability of her title to the said Lot 2, and the claim of ownership of the United States of America thereto.

XVII.

That in August, 1951, defendants Paul Winans and Ethel Winans falsely represented to defendant Walter Stegmann that they were the owners of a marketable title to the said Lot 2 and granted and delivered to the said defendant Walter Stegmann an option to purchase said property, a copy of which option is hereto annexed, marked "Exhibit A," and incorporated herein the same as though fully set forth.

XVIII.

That on August 13, 1951, the said defendant Walter Stegmann assigned said option to defendant Chet L. Parker by an instrument in writing, a copy of which is hereto annexed, marked "Exhibit B," and incorporated herein the same as though fully set forth.

XIX.

That at all times subsequent to August 13, 1951, the said defendant Walter Stegmann was the duly authorized agent of the defendant Chet L. Parker

in all matters pertaining to the property described in said option and assignment.

XX.

That defendant Lois M. Parker is the wife of defendant Chet L. Parker and that said defendants claim to be residents of the State of Washington, and that the defendant Lois M. Parker was the duly authorized agent and representative of defendant Chet L. Parker in connection with said option and assignment and the conveyance hereinafter described.

XXI.

That on August 13, 1951, defendant Chet L. Parker made application to plaintiff and ordered from plaintiff a policy of owner's title insurance on said Lots 1 and 2.

XXII.

That at all times herein mentioned the United States of America has been in possession of Lot 2 and has claimed the ownership thereof, and that such facts and the facts alleged in Paragraphs V, VI and VIII above do not appear of record in Hood River County, Oregon.

XXIII.

That on August 18, 1951, defendant Walter Stegmann executed a written notice of election to purchase and received from the defendants Paul Winans and Ethel Winans an acknowledgment of election to purchase, copies of which notice and acknowledgment are attached hereto, marked "Exhibit C," and incorporated herein the same as though fully set forth.

XXIV.

That on September 11, 1951, defendant Ethel Winans executed and delivered to the defendant Lois M. Parker, acting as the agent of defendant Chet L. Parker, a purported bargain and sale deed conveying said Lots 1 and 2 to the said Chet L. Parker, copy of which deed is hereto annexed, marked "Exhibit D," and incorporated herein the same as though fully set forth.

XXV.

That neither Ethel Winans nor Paul Winans nor any other party represented by them disclosed to defendants Chet L. Parker, Lois M. Parker or Walter Stegmann the fact of or basis of the claim of ownership of the United States of America to said Lot 2 or the fact of the claim made by Ethel Winans against said Pacific Abstract Title Co. on account of said claim of ownership and the settlement of said claim until after the execution and delivery of the documents described in Paragraphs XVII, XVIII, XXIV above, and the receipt of the consideration therefore, and that if such a disclosure had been made the said consideration would not have been paid.

XXVI.

That on September 12, 1951, plaintiff, in consideration of the premium received in the sum of \$430.00, issued and delivered to defendant Chet L. Parker its policy of owner's title insurance No. HR12-987 in the face amount of \$125,000.00, insuring the said Chet L. Parker as the owner in fee simple of said Lots 1 and 2, excepting only a portion of Lot 1 not herein material, and subject to the

exceptions and conditions contained in said policy, a copy of which policy is hereto annexed, marked "Exhibit E," and incorporated herein the same as though fully set forth.

XXVII.

That prior to the issuance of said policy of title insurance set forth in Exhibit E, the defendants Chet L. Parker, Lois M. Parker, and Walter Stegmann knew that the United States of America was in possession of said Lot 2 and knew the United States of America claimed title thereto and said defendants failed to disclose to plaintiff their knowledge of said facts.

XXVIII.

That plaintiff did not know that the United States of America was in possession of and claimed ownership of Lot 2 and would not have issued said policy of insurance if said defendants Chet L. Parker, Lois M. Parker and Walter Stegmann, or any of them, had disclosed said facts to plaintiff.

XXIX.

That all of the defendants, with the exception of defendants Chet L. Parker and Lois M. Parker, received some consideration or payment on account of the option and assignment thereof and conveyance described in Paragraphs XVII, XVIII and XXIV above, the exact amount of which consideration and payment is not known to plaintiff.

XXX.

That immediately after September 12, 1951, plaintiff learned of the claim of ownership of the United

States of America and promptly notified the defendant Chet L. Parker of that claim.

XXXI.

That the defendant Chet L. Parker represented to plaintiff that the value of said Lot 2 between August 13, 1951, and September 12, 1951, was \$95,000.00; that the defendant Chet L. Parker now claims that the value of said Lot 2 exceeded \$125,000.00 at said time and that the defendant Chet L. Parker has notified plaintiff that he intends to claim a loss under said policy of title insurance set forth in Exhibit E on account of a defect in the title to Lot 2.

XXXII.

That defendant Chet L. Parker and Lois M. Parker have refused to furnish plaintiff with any proof of value of said property or loss under said policy, although plaintiff has requested them to do so.

XXXIII.

That a bona fide justiciable controversy exists between the parties as to the ownership of said Lot 2, the validity of said policy of title insurance issued by plaintiff, the extent of coverage of said policy of title insurance issued by plaintiff, the extent of coverage of said policy, if valid and in effect, the amount of loss or damage to the defendant, Chet L. Parker, if said policy of insurance is valid and in effect, and the nature and extent of plaintiff's right of subrogation to recover the amount of consideration paid for said option to purchase Lot 2 and paid to the sellers of said Lot 2 against the various

parties, who received such consideration, and its rights against the other parties, and that the whole of this controversy can be settled and determined in this one action.

Wherefore, plaintiff prays that the court make and enter a judgment herein as follows:

1. Determining and quieting the title to the said Lot 2, in the party or parties rightfully entitled thereto.

2. Cancelling said policy of title insurance issued by plaintiff to defendant, Chet L. Parker and awarding said defendant judgment against plaintiff for the sum of \$430.00 together with legal interest thereon from September 12, 1951, until paid and declaring that plaintiff has no further liability under said policy.

3. In the alternative, in the event that the court determines that said policy of insurance shall not be cancelled, determining whether or not said policy of title insurance insures against any loss or damage to the defendant, Chet L. Parker, on account of the rights or interests, if any, of the United States of America in said Lot 2.

4. In the alternative, in the event that the court determines that said policy should not be cancelled and that any loss or damage to the defendant, Chet L. Parker, on accounts of the rights or interest, if any, of the United States of America in said Lot 2 are covered by said policy, determining the value of said Lot 2 at the date of issuance of said policy and

the amount of loss or damage, if any, sustained by the defendant, Chet L. Parker thereunder.

5. In the alternative in the event that the court determines that said policy should not be cancelled and that any loss or damage of the defendant, Chet L. Parker, on account of the rights or interests, if any, of the United States of America in said Lot 2 are covered under said policy, determining the nature and extent of plaintiff's right of subrogation against the defendants, Walter Stegmann, Ethel Winans, Paul Winans and Ella G. Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and R. C. Elder to recover the consideration paid said defendants for said option and assignment of option and conveyance of said Lot 2 described herein, and determining what the said consideration was and awarding plaintiff judgment therefor.

6. Awarding plaintiff such other relief as to the court may seem proper.

GRIFFITH, PHILLIPS &
COUGHLIN,

By /s/ JAMES K. BUELL,
Attorneys for Plaintiff.

Address of Attorneys for Plaintiff:

807 Electric Building,
621 S. W. Alder Street,
Portland 5, Oregon.

[Exhibits A, B, C, D and E attached to the foregoing complaint are, respectively, Exhibits C, G, H, B and F, attached to amended complaint.]

EXHIBIT No. 123

[Exhibit 123 is a preliminary title report. It is attached to the amended complaint as Exhibit D.]

EXHIBITS Nos. 201, 202, 203

[Exhibits 201, 202 and 203 are satisfactions of chattel mortgages given by The First National Bank of Sheridan, each dated January 23, 1953, and describing a chattel mortgage executed by Walter Stegmann to The First National Bank of Sheridan, recorded in Chattel Mortgage Records of Yamhill County, Oregon, said satisfactions being dated as follows:]

Ex. No.	Date of Original Chattel Mortgage
201	1-19-48
202	7-29-48
203	12- 9-46

EXHIBIT No. 204

Northwest Acceptance Corporation
Formerly
The Courtemanche Acceptance Corp.
Box 89, McMinnville, Oregon, Phone 5801

January 17, 1953.

Mr. John D. Ryan,
918 Equitable,
Portland, Oregon.

Dear Mr. Ryan:

This letter is to certify that Walter Stegmann of Route 2, Box 81, Sheridan, Oregon, gave L. A. Courtemanche, an Oregon Corporation, a mortgage

on a certain 1938 Dodge truck, motor DSP3744, serial 8424374, and an Isaacson single axle trailer complete with truck equipment in January, 1949, for an original total of \$838.03.

This mortgage had been paid down to a balance of \$333.78 when we refinanced the equipment for Mr. Stegmann for a principle amount of \$385.43. We received a payment of \$100 on this mortgage on November 22, 1949, and on December 17, 1949, the balance was paid in full. All papers in connection with this transaction were returned to Mr. Stegmann on December 21, 1949, along with mortgage release.

NORTHWEST ACCEPTANCE
CORPORATION,

/s/ TRACE McDONALD,
Credit Department.

Witness my hand and notarial seal the date and year last above written.

[Seal] /s/ ALMA R. SCHROEDER,
Notary Public.

My commission expires November 13, 1955.

EXHIBITS Nos. 205 and 206

[Exhibits 205 and 206 are satisfactions of chattel mortgages dated Jan. 17, 1953, from L. A. Courtemanche to Walter Stegmann, the original mortgages being dated as follows:]

205.....October 23, 1949
206.....January 27, 1949

EXHIBIT No. 304

Option

On or before three days after date, for and in consideration of the sum of \$1000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as the seller, agree and promise to sell at the option of to Walt Stegmann, hereinafter designated the buyer, his heirs or assigns, the following described real property, to wit: excepting 8.88 acres the location of which shall be selected, measured and set out along Lost Lake by the Seller on or before ten days from date hereof.

For the total sum of \$100,000.00 to be paid as follows:

\$4000.00 on even date of notice—election by the Buyer to purchase under this option and \$95,000.00 on [or before] even date of delivery of a good and sufficient deed of conveyance, conveying said described [property] land by the said seller to the said the buyer. Said deed to be delivered on or before ten days from date hereof.

[The words in light-face brackets [or before] and [property] deleted with pencil in copy.]

/s/ PAUL WINANS,
Agent.

Approved: August 11, 1951.

ETHEL WINANS,
Owner of Title.

WALT STEGMANN,
Buyer.

EXHIBIT No. 305

Option

On or before seven days after date hereof, for and in consideration of the sum of \$1,000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as The Sellers, agree and promise to sell to Walter Stegmann, his heirs or assigns, hereinafter designated The Buyer, at his option, the following-described real property:

NW $\frac{1}{4}$, NE $\frac{1}{4}$ (Lot 1), containing 25.88 acres, and NE $\frac{1}{4}$, NW $\frac{1}{4}$ (Lot 2), containing 40 acres, more or less, in Section 16, Township 1 South, Range 8 East, Willamette Meridian in Hood River County, Oregon, excepting 8.88 acres located along and adjacent to the meandered water shore line of Lost Lake and which shall be selected, measured and staked out on boundaries mutually agreed upon on or before the expiration date of this option.

For the total sum of \$100,000.00 to be paid as follows:

Credit by check subject to collection paid on option herewith.....	\$ 1,000.00
Payment on even date of written notice of election of The Buyer to purchase under this option.....	4,000.00
Final payment to be made on even date of delivery of deed to above- described land by The Seller on or before ninety days from date hereof	95,000.00
	<hr/>
	\$100,000.00

For which The Seller agrees to deliver a good and sufficient deed of conveyance showing title free and clear of all mortgage, contract, judgment or tax liens, conveying to The Buyer all the right, title and interest of The Sellers to the above-described real property.

Signed:

/s/ PAUL WINANS,

/s/ ETHEL WINANS.

Approved:

/s/ WALTER STEGMANN.

EXHIBIT No. 307

Notice of Election to Purchase

Hood River, Oregon.

August 18, 1951.

Paul Winans, Agent,

Ethel Winans, et al.

This will serve to notify you that I herewith elect to purchase the real property situated in Section 16, Township 1 South, Range 8 East, W. M., as set out and described in that certain option granted to me by yourselves on date of August 11, 1951, in consideration of payment of the total purchase price of \$100,000.00 (One Hundred Thousand Dollars) to be paid to you at the time and dates as specified under the terms of said option.

/s/ WALTER STEGMANN.

Acknowledgment of Notice

Walter Stegmann,
RFD No. 3,
McMinnville, Oregon.

Receipt of your check of even date hereof in the amount of \$4,000.00 (Four Thousand Dollars), subject to collection together with notice constituting your election to purchase, is hereby acknowledged.

It is further mutually understood and agreed that

time period for measuring and staking out 8.88 acres to be retained by the Sellers is hereby extended date of on or before August 26, 1951.

/s/ PAUL WINANS,

/s/ ETHEL WINANS.

Approved:

/s/ WALTER STEGMANN.

EXHIBIT No. 308

August 25, 1951.

Agreed that time for completion of survey and staking out 8.88 acres of land retained by Sellers under option dated August 11, 1951, is hereby extended to Sept. 10, 1951, or before, if mutually satisfactory to both Buyer and Seller.

/s/ PAUL WINANS,

/s/ WALT STEGMANN.

EXHIBIT No. 311

Memorandum of Agreement

Witness: That Paul Winans, agent and trustee, for and on behalf of the Sellers, and Walter Stegmann, the Buyer, have on this day and date selected and agreed upon the location and area of the lands to be retained in the ownership of the Sellers as

provided under the terms of that certain option dated August 11, 1951, as described in the following meets and bounds, to wit:

It is further mutually understood and agreed that the deed of conveyance as provided for in said option shall be prepared and delivered, subject to any and all alleged claim or claims of the United States Government running against the NE $\frac{1}{4}$, NW $\frac{1}{4}$, Section 16, T. 1 S; R. 8 E, W. M., conveying from the said Ethel Winans to the said Walter Stegmann, on or before one week after date hereof.

.....
 Approved:

.....

Dated at Hood River, Oregon, September . . . ,
 1951.

EXHIBIT No. 315

Abstract of Title

No. 616

From the Office of
 Oregon Abstract Company
 Hood River, Oregon

Covering the following-described real premises situated in the County of Hood River (formerly and until June 23, 1908, a portion of Wasco County), State of Oregon, to wit:

Lot 1 and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 16,

Tp. 1 South of Range 8 East of Willamette Meridian, containing 65.88 acres.

References to books and pages of records of the instruments shown herein, if prior to June 23, 1908, are to Wasco County records; if after that date, to Hood River County records.

#616—p. 1.

Continuation of Abstract of Title to Lands
Described in the Caption Hereto Attached

No. I.

UNITED STATES,

Grantor,

to

STATE OF OREGON,

Grantee.

Instrument Grant:

Date of Instrument:

Date of Record:

Book: Page:

Consideration: \$

Are Signatures Sealed: Yes.

Names of Witnesses:

Signatures:

Date of Acknowledgment:

Before Whom Acknowledged:

Granting Words:

Covenant, if any:

Description and Remarks

Under Act of Congress August 14th, 1848, setting aside Section Sixteen and Thirty-six in each township to the State for school purposes.

[Exhibit 315, of which the first two pages are set forth above, is an abstract of title to the property involved in this suit, together with certain continuations thereof. The original abstract of five pages and the first extension of one page were dated, respectively, January 2, 1923, and July 20, 1925, both certified to by Oregon Abstract Company. There is a continuation of six pages together with a certificate by Hood River Abstract and Investment Company dated October 4, 1938; and a continuation of five pages together with a certificate dated April 16, 1946, signed by Hood River Abstract and Investment Company. It sets forth descriptions of the documents referred to in Exhibit 6.]

EXHIBIT No. 319

Hood River Branch
Hood River, Oregon

August 10, 1951.

First National Bank of McMinnville,
McMinnville,
Oregon.

Gentlemen:

We have a customer who is contemplating a real estate transaction with Mr. Walter Stegmann which may run into the neighborhood of \$80,000.00. This may be partly cash and partly other property.

As Mr. Stegmann is a stranger to all parties concerned at Hood River, our customer would like to have some idea of his financial responsibility before completing any agreements. Mr. Stegman stated that he carries his bank business at McMinnville and although we do not know which bank, we will appreciate it very much if you will call us collect upon receipt of this letter and give us whatever information you can obtain regarding Mr. Stegmann's financial responsibility and real estate holdings.

We realize that you would not want to use actual figures probably but we would appreciate a reply giving your judgment whether or not Mr. Stegmann

is financially responsible to transact an \$80,000.00 deal.

Very truly yours,

/s/ P.F.B.,

P. F. BUCKLIN,

Manager.

PFB:igh

EXHIBIT No. 320

Hood River Branch
Hood River, Oregon

August 11, 1951.

Mr. and Mrs. Chet Parker,
106 E. 33rd Street,
Vancouver, Washington.

Dear Mr. and Mrs. Parker:

We have had a credit inquiry recently regarding a Mr. Walter Stegmann and we were referred to the First National Bank of McMinnville for information. This bank called us today and stated that they had very little credit information regarding Mr. Stegmann but that if we would contact you folks they thought you would be able to give us Mr. Stegmann's history and a statement as to his financial responsibility. I might add that he is making negotiations for quite a large real estate transaction

which would involve possibly as high as \$80,000.00, either in trade or in transfer of real estate equities.

Our customer would especially like to know, of course, if Mr. Stegmann is financially able to handle a deal of this size, or, in other words, if he has sufficient resources to make the transaction.

We enclose a self-addressed and stamped envelope for your reply and will appreciate very much the benefit of your experience in business dealings with Mr. Stegmann and any information you can give of him along the above lines.

Very truly yours,

/s/ P.F.B.,

P. F. BUCKLIN,
Manager.

PFB:igh

EXHIBIT No. 321

Vancouver, Wn.,
Aug. 15, 1951.

First National Bank of Hood River,
Hood River, Oregon.

Dear Sirs:

In regard to your credit inquiry concerning Walter Stegmann, I will say that we have found him to be honest, trustworthy and capable. I feel sure that Mr. Stegmann has the necessary funds to com-

plete a transaction such as you mention. I have known Mr. Stegmann for a good many years and have never found him to be other than he represents himself. Hoping this may be of some help to you, I remain,

Yours truly,

/s/ CHET L. PARKER.

CLP/mn

EXHIBIT No. 323

[News clipping Hood River Daily Sun, Sept. 13, 1951.]

Lost Lake Land
Sold By Winans

Title to the majority of the remaining privately owned land on Lost Lake changed hands this week when Ethel Winans sold to an unknown purchaser 55 acres of the 65 acres she owns bordering on the lake. The deed was recorded at the court house under the name of Chet L. Parker. On it were revenue stamps representing a transaction involving \$125,000.

Parker's address was given as McMinnville. In that community he is interested in logging. It is estimated there is roughly 4 million feet of timber on the land.

The land located on the west side of the lake was purchased by Miss Winans' father, the late Wilson Ross Winans who acquired it about 50 years ago.

The new purchaser, who apparently was rather secretive about his purchase, was quoted by one person as saying he was purchasing it for a private retreat.

Miss Winans retained 10 acres and most of the 1½ mile of waterfront. All land other than these two tracts is owned by the Forest Service or the City of Portland in the Bull Run Watershed.

EXHIBIT No. 324

[News Clipping Hood River Daily Sun,
Sept 18, 1951.]

Lost Lake Land
Was Purchased
Fifty Years Ago

A transaction of much interest locally was revealed Tuesday of last week wherein a deed conveying 55 acres, more or less, of virgin forest lake-shore and adjacent lands bordering on Lost Lake from Ethel Winans, trustee, to Chet L. Parker was recorded at the courthouse.

The property which has been owned by the Winans family for nearly 50 years was acquired by the late Wilson Ross Winans when access to Lost Lake beyond the pioneer Winans homestead hard by the Punch Bowl was had by fording streams and by winding precipitous pack trail some 20 miles to the then remote spot of enchantment in the wilderness. Mr. Winans in that early day believed in the

future of Lost Lake as he did in that of all the Hood River valley. He it was who circulated the petition for the granting of a county road to the lake and guided the surveying party who located the route through the forests. Along the western shore of the lake may be seen to the present day the standard three notch blazes made by his trusty axe marking the course of the new roadway through the forest.

Some 10 acres of lake front is retained in the Winans family. It is understood that the new ownership plans to hold their area as a primitive mountain retreat with a minimum of timber removal in its development.

EXHIBIT No. 325

[Hood River News, 12/7/51.]

Title Company

Files Complaint

A complaint was filed Thursday of last week at Portland by the Title and Trust company seeking judicial action on the matter of land purchase by Chet L. Parker of McMinnville several months ago in which title insurance was secured through the title company.

Some 40 acres of land, some fronting on Lost Lake, is involved. Parker through his agent, Walter Stegmann, also McMinnville, bought the property

for a price in excess of \$100,000 from Ethel Winans and other members of the Winans family.

More recently, the federal government has notified parties concerned that it holds title to the property and that the land never belonged to the Winans' interests.

According to Ed Miller, Hood River manager of the title office his company is presenting the case to court with all the facts, seeking to determine the following: If the company is liable under the conditions, if so to what extent and what recourse might be made on the sale of property.

EXHIBIT No. 327

Option

On or before seven days after date hereof, for and in consideration of the sum of \$1000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as The Sellers, agree and promise to sell to Walter Stegmann, his heirs or assigns, hereinafter designated, The Buyer, at his option, the following described real property:

NW $\frac{1}{4}$, NE $\frac{1}{4}$, (Lot 1) containing 25.88 acres, and NE $\frac{1}{4}$, NW $\frac{1}{4}$, (Lot 2), containing 40 acres, more or less, in Section 16, Township 1 South; Range 8 East, Willamette Meridian in Hood River County, Oregon, excepting 8.88 acres located along and adjacent to the meandered

water shore line of Lost Lake and which shall be selected, measured and staked out on boundaries mutually agreed upon on or before the expiration date of this option.

For the total sum of \$100,000.00 to be paid as follows:

Credit by check subject to collection
paid on option herewith\$ 1,000.00

Payment on even date of written
notice of election of The Buyer
to purchase under this option....\$ 4,000.00

Final payment to be made on even
date of delivery of deed to above
described land by The Seller on
or before ninety days from date
hereof\$ 95,000.00

\$100,000.00

For which The Seller agrees to deliver a good and sufficient deed of conveyance showing title free and clear of all mortgage, contract, judgment or tax liens, conveying to The Buyer all the right, title and interest of The Sellers to the above-described real property.

/s/ PAUL WINANS,

/s/ ETHEL WINANS.

Approved,

.....

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Amended complaint; Reply and answer of plaintiff to answer of defendants Parker and counterclaim of defendant Chet L. Parker; Answer and counterclaim of defendants Parker to amended complaint; Answer and counterclaim of defendant Walter Stegmann to amended complaint; Third-party complaint; Third-party defendants' answer, counterclaim against third-party plaintiff, and claim against defendants; Answer of defendants Parker to cross-claim of defendants Winans, and cross-claim; Answer of defendant Stegmann to cross-claim of defendants Winans, and cross-claims; Answer of third-party defendants to cross-claim of defendant, Chet L. Parker; Stipulation; Answer of third-party defendants to cross-claims of defendant Stegmann; Stipulation of admitted facts; Findings of fact and conclusions of law; Judgment order; Notice of appeal (Chet L. Parker and Lois M. Parker); Statement of points on appeal; Designation of contents of record (Chet L. and Lois M. Parker); Supersedeas bond; Notice of appeal (Walter Stegmann); Additional designation of contents of record on

appeal (Paul Winans, et al); Order extending time for filing the record on appeal and docketing appeal; Statement of points of defendant Stegmann on appeal; Designation of contents of record (Walter Stegmann); Order extending time for filing record on appeal and docketing appeal; Additional designation of contents of record on appeal; Motion to take appeal in forma pauperis (Walter Stegmann); Order authorizing an appeal in forma pauperis; Motion for transmission of original exhibits and transcript of testimony; Order for transmittal of original exhibits and transcript of testimony; Stipulation re corrections as to lettering exhibits, etc.; Order re corrections as to lettering exhibits, etc.; and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 6242, in which Chet L. Parker, et al are appellants and Title and Trust Company and Paul Winans, et al are appellees; that the said record has been prepared by me in accordance with the designations of contents of record on appeal filed by the appellants and appellees and in accordance with the rules of this court.

I further certify that a fee of \$5.00 has been paid by the appellants, Parker and \$5.00 by the appellants, Stegmann.

I further certify that there is also enclosed herewith a copy of the oral opinion of the court dated March 16, 1953, and a memorandum of legal services performed by Krause & Evans, Attorneys for

the Third-Party Defendants and a memorandum of expenses incurred by third-party defendants.

I further certify that there is being forwarded under separate cover Narrative statement of portions of transcript of testimony offered by defendants, Parker; Transcript of testimony dated January 20, 1953, in five volumes; Transcript of testimony dated March 20, 1953, and exhibits numbered as follows: Nos. 2 to 4—6 to 9—10-A, B, C, D—18 to 20—Depositions of Stegmann, C. L. Parker, Paul Winans and Herbert Alstadt referred to as Exhibits 21, 22, 23, and 24 but not so marked; 26—27—28-A and B—29 to 33—33-A—34 and 35—35-A—36—36-A—38-A and B—39-A, B, C, D—40—40-A—41—41-A—42 to 46—47-A, B, D—48 to 55—56-A, B, C—57-A and B—59 and 60—63-A, B, C, D, E, F, G, H, I, J—64 to 73—74-A and B—76 to 82—86 and 87—92 to 94—101 to 107—110 to 113—115—115-A—116 to 129—201 to 206—303 to 305—307 and 308—311—315—318 to 321—323 to 325—327—328-A and B—and 329, inclusive.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District this 12th day of January, 1954.

[Seal] /s/ F. L. BUCK,
Acting Clerk.

[Endorsed]: No. 14201. United States Court of Appeals for the Ninth Circuit. Chet L. Parker and Lois M. Parker, Appellants, vs. Title and Trust Company, a Corporation; Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeous Winans, Appellees, and Walter Stegmann, Appellant, vs. Title and Trust Company, a Corporation; Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeous Winans, Appellees. Transcript of Record. Appeals from the United States District Court for the District of Oregon.

Filed January 15, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 14201

CHESTER A. PARKER, LOIS M. PARKER and
WALTER E. STEGMANN,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation;
PAUL WINANS, ETHEL WINANS, ROSS
M. WINANS, AUDUBON WINANS and
LINNAEUS WINANS,

Appellees.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS PARKER INTEND TO RELY

Pursuant to Rule 19(6) of the above court, appel-
lants Parker present the following statement of the
points on which they intend to rely:

1. The following numbered Findings of Fact
entered by the Court are, except to the extent herein
otherwise stated, not supported by the evidence:

(a) Finding No. XV, except that for some time
prior to August 11, 1951, appellant Stegmann nego-
tiated with appellee Paul Winans for the purchase
of the real property involved in this case.

(b) The first two sentences of Finding XVI,
except that it was agreed that Winans would sell
both lots as a unit for \$100,000.00.

(c) All of Finding XVII.

(d) The last sentence of Finding XVIII.

(e) The last sentence of Finding XXI.

(f) Finding XXII, except that on August 31, 1951, appellant Chet Parker accompanied a surveying party on the premises and had discussions and arguments with Paul Winans, but not with respect to the matters set forth in said finding.

(g) The second, third and fourth sentences of Finding XXV.

(h) The third, fourth and eighth sentences of Finding XXVI.

(i) Finding XXVIII.

(j) With respect to Finding XXIX, deny that appellants "concealed" any facts from Title and Trust Company and also deny that Stegmann was their agent.

(k) Finding XXX, except that these appellants knew on and after August 13, 1951, that Winans had previously obtained a policy of title insurance on said property.

(l) The first four lines and the last sentence of Finding XXXIII.

(m) The second sentence of Finding XXXIV.

(n) Finding XXXV.

(o) Finding XXXVI, except that Stegmann delivered to appellants the assignment of the option,

that appellants delivered said option and said assignment to appellee Title and Trust Company and advised it that appellant Chet L. Parker had purchased the option and paid \$25,000.00 for it.

(p) Finding XXXVII.

(q) Finding XXXVIII.

(r) Finding XXXIX, except that appellee Title and Trust Company when it issued the policy believed that the title was as set forth in its policy, and that appellants had contracted to purchase it for \$125,000; except also that said appellee relied upon its examination of its records and the public records of Hood River County, Oregon.

(s) With respect to Finding XLI, appellants deny all portions thereof which charge them with fraudulent conduct.

(t) The last two sentences of Finding XLII, except that they gave no notice to appellee Title and Trust Company of any defect of title prior to September 11, 1951.

(u) Finding XLIII, except the first sentence thereof.

(v) Finding XLV.

(w) Finding XLVI, except that appellants Parker knew that plaintiff planned to institute legal proceedings against the Winans. The charges in the original complaint are as set forth therein, Exhibit 118.

(x) Finding XLVII.

(y) Finding XLVIII. These appellants, however, concede that the services of Winans' attorneys rendered them in this case was of a reasonable value of \$9,000.00 or more.

2. Appellants Parker will contend that there is no justification in fact or in law for any of the conclusions of law entered by the court, except Conclusion No. 1 regarding the jurisdiction of the court and VI regarding plaintiff's claim against third-party defendants.

3. In addition to contending that the facts do not justify the findings upon which the conclusions are based, and without in the least waiving that contention, it will be contended that a person applying for a policy of title insurance, such as that involved here, is under no obligation to the title company to advise it with respect to statements which have come to his attention concerning alleged defects of title; that even though two persons should agree that they will not call attention to the title company concerning any such information, there is no legal wrong to the title company; that the foregoing rules of law are particularly applicable if the alleged defects of title are a matter of public record available to the title company.

4. Any statements made by the Parkers at the times referred to in Finding XLIII were privileged communications.

5. The evidence of prior transactions between

appellants Parker and appellant Stegmann and also prior transactions between either or both of them and third persons was improperly admitted by the court and such evidence has no relevancy whatever in support of the contention that the Parkers and Stegmann entered into a conspiracy or that the Parkers intended or attempted to defraud the title company.

6. Based upon the foregoing, it will be contended that the court erred in entering the final judgment which was entered; and that the court should have entered a judgment in favor of appellants Parker against the Title and Trust Company, or in the alternative against the third-party defendants, for \$125,000.00, together with costs and attorneys' fees.

Respectfully submitted,

CAKE, JAUREGUY & HARDY,

By /s/ NICHOLAS JAUREGUY,
Attorneys for Appellants
Parker.

Service of copy acknowledged.

[Endorsed]: Filed January 13, 1954.

[Title of Court of Appeals and Cause.]

STIPULATION RE DESIGNATION OF
EXHIBITS FOR PRINTING

It is hereby stipulated and agreed that the explanatory matters in the attached designation for printing of exhibits, submitted by appellants Parker, in each instance correctly describes the particular exhibit referred to and the parties agree that such explanatory matters may be printed as part of the record.

All parties hereto reserve the right to designate further exhibits, or parts of exhibits, or submit further explanatory statements or descriptions, other than those in the attached designation.

Dated this 9th day of January, 1954.

PHILLIPS, COUGHLIN,
BUELL & PHILLIPS;

By /s/ JAMES K. BUELL,
Attorneys for Appellee
Title and Trust Company.

KRAUSE & EVANS;

By /s/ DENNIS J. LINDSAY,
Attorneys for Appellees
Winans.

RYAN & PELAY;

By /s/ JOHN D. RYAN,
Attorneys for Appellant
Stegmann.

CAKE, JAUREGUY & HARDY;

By /s/ NICHOLAS JAUREGUY,
Attorneys for Appelants
Parker.

[Endorsed]: Filed January 13, 1954.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH AP-
PELLANT STEGMANN INTENDS TO
RELY ON APPEAL

Pursuant to Rule 19(6) of the above court, appellant Stegmann presents the following statement of the points on which he intends to rely:

1. The following numbered Findings of Fact entered by the Court are, except to the extent herein otherwise stated, not supported by the evidence.

(a) Finding No. XV, except that for some time prior to August 11, 1951, appellant Stegmann negotiated with appellee Paul Winans for the purchase of the real property involved in this case.

(b) The first two sentences of Finding XVI, except that it was agreed that Winans would sell both lots as a unit for \$100,000.00.

(c) All of Finding XVII.

(d) The last sentence of Finding XVIII.

(e) The last sentence of Finding XXI.

(f) Finding XXII, except that on August 31, 1951, appellant Chet Parker accompanied a surveying party on the premises and had discussions and arguments with Paul Winans, but not with respect to the matters set forth in said finding.

(g) The second, third and fourth sentences of Finding XXV.

(h) The third, fourth and eighth sentences of Finding XXVI.

(i) Finding XXVIII.

(j) With respect to Finding XXIX, denies that appellants Parker "concealed" any facts from Title and Trust Company and also denies that appellant Stegmann was the agent of appellants Parker.

(k) Finding XXX, except that this appellant knew on and after August 13, 1951, that Winans had previously obtained a policy of title insurance on said property.

(l) The first four lines and the last sentence of Finding XXXIII.

(m) The second sentence of Finding XXXIV.

(n) Finding XXXV.

(o) Finding XXXVI, except that appellant Stegmann delivered to appellants Parker the assignment of the option, that appellants Parker delivered said option and said assignment to appellee

Title and Trust Company and advised it that appellant Chet L. Parker had purchased the option and paid \$25,000.00 for it.

(p) Finding XXXVII.

(q) Finding XXXVIII.

(r) Finding XXXIX, except that appellee Title and Trust Company when it issued the policy believed that the title was as set forth in its policy, and that appellants Parker had contracted to purchased it for \$125,000; except also that said appellee relied upon its examination of its records and the public records of Hood River County, Oregon.

(s) With respect to Finding XLI, appellant Stegmann denies all portions thereof which charge appellants Parker with fraudulent conduct and appellant Stegmann with fraudulent conduct and conspiracy.

(t) The last two sentences of Finding XLII, except that appellants Parker gave no notice to appellee Title and Trust Company of any defect of title prior to September 11, 1951.

(u) Finding XLIII, except the first sentence thereof.

(v) Finding XLV.

(w) Finding XLVI. The charges in the original complaint are as set forth therein, Exhibit 118.

(x) Finding XLVII.

(y) Finding XLVIII. This appellant, however, concedes that the services of Winans' attorneys

rendered them in this case was of a reasonable value of \$9,000.00 or more.

2. Appellant Stegmann will contend that there is no justification in fact or in law for any of the conclusions of law entered by the court, except Conclusion No. 1 regarding the jurisdiction of the court and Conclusion No. VI regarding plaintiff's claim against third-party defendants.

3. In addition to contending that the facts do not justify the findings upon which the conclusions are based, and without in the least waiving that contention, it will be contended that a person applying for a policy of title insurance, such as that involved here, is under no obligation to the title company to advise it with respect to statements which have come to his attention concerning alleged defects of title; that even though two persons should agree that they will not call attention to the title company concerning any such information, there is no legal wrong to the title company; that the foregoing rules of law are particularly applicable if the alleged defects of title are a matter of public record available to the title company.

4. Any statements made by the appellants Parkers at the times referred to in Finding XLIII were privileged communications.

5. Appellant Stegmann will contend that the trial court erred in failing to grant appellant Stegmann's motion for a judgment of involuntary nonsuit as to appellee Title and Trust Company, said motions appearing in the reporter's transcript on

page 1217 through 1225, and in the printed transcript of appellant Stegmann on pages 15 and through 21.

6. The evidence of prior transactions between appellants Parker and appellant Stegmann and also prior transactions between either or both of them and third persons was improperly admitted by the court and such evidence has no relevancy whatever in support of the contention that the Parkers and Stegmann entered into a conspiracy or that the Parkers intended or attempted to defraud the title company.

7. Based upon the foregoing, it will be contended that the court erred in entering the final judgment which was entered; and that the court should have entered a judgment in favor of appellant Stegmann against the Title and Trust Company and a judgment in favor of appellant Stegmann and against appellees Winans on the answers and cross-claim of appellees Winans, and a further judgment on the second cross claim of appellant Stegmann against appellees Winans for a reasonable attorneys' fee in this suit.

Respectfully submitted,

/s/ JOHN D. RYAN, of

RYAN & PELAY,

Attorneys for Appellant
Stegmann.

Affidavit of mail attached.

[Endorsed]: Filed February 1, 1954.

